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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CHEMICAL MANUFACTURERS ASSOCIATION, *et al.*,
AMERICAN IRON & STEEL INSTITUTE, *et al.*,
AMERICAN PAPER INSTITUTE, *et al.*,
AMERICAN PETROLEUM INSTITUTE, *et al.*,
AMERICAN TEXTILE MANUFACTURERS INSTITUTE,
NATIONAL COAL ASSOCIATION, and
VIRGINIA ELECTRIC AND POWER COMPANY, *et al.*,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and
ANNE M. GORSUCH, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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May 1982

QUESTIONS PRESENTED

The decision at issue involves fundamental questions as to the proper court for judicial review of Environmental Protection Agency ("EPA") regulations under the Clean Water Act ("CWA" or "the Act"). The D.C. Circuit has asserted direct appellate jurisdiction under Section 509(b)(1) of the Act, 33 U.S.C. § 1369(b)(1), over challenges to EPA's general policy and procedural regulations governing the grant or denial of National Pollutant Discharge Elimination System ("NPDES") permits. In doing so, it specifically rejected the contrary reasoning of a decision of the Third Circuit, and upset settled expectations as to the limited breadth of appellate jurisdiction under the Act. The questions presented are:

1. Whether EPA's procedural regulations governing the grant or denial of NPDES permits, 40 C.F.R. Parts 122-125 (1980), constitute "effluent limitation[s] or other limitation[s]" under Section 509(b)(1) of the Act, reviewable in the courts of appeals.

2. Whether the court below exceeded the statutory limits on its jurisdiction under Section 509(b)(1) of the Act, and misinterpreted prior decisions of this Court, in asserting appellate jurisdiction over the NPDES permit regulations.

PARTIES

The parties to this action are as follows:[1]

Chemical Manufacturers Association, Virginia Manufacturers Association, Inc., Virginia Chemicals, Inc., American Cyanamid Company, Borden Inc., E. I. du Pont de Nemours & Co., FMC Corporation, Kaiser Aluminum & Chemical Company, Monsanto Company, Northern Petrochemical Company, Olin Corporation, PPG Industries, Inc., Rohm and Haas Company, Stauffer Chemical Company, The B. F. Goodrich Company, The Goodyear Tire & Rubber Company, Union Carbide Corporation;

American Iron & Steel Institute, Allegheny Ludlum Steel Corporation, Armco Inc., Bethlehem Steel Corporation, Cyclops Corporation, Inland Steel Company, Jones & Laughlin Steel Corporation, National Steel Corporation, Republic Steel Corporation, United States Steel Corporation;

American Paper Institute, National Forest Products Association;

American Petroleum Institute, Atlantic Richfield Company, Chevron U.S.A., Inc., Conoco Inc., Exxon Corporation, Getty Oil Corporation, Gulf Oil Corporation, Marathon Oil Company, Mobil Oil Corporation, Phillips Petroleum Company, Shell Oil Company, Standard Oil Company (Indiana), Texaco Inc., Union Oil Company of California;

American Textile Manufacturers Institute;

Burlington Industries, Inc.;

Citizens for a Better Environment;

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[1] In accordance with Rule 28.1 of the Rules of the Supreme Court, the parent companies, subsidiaries and affiliates of each corporate party to this petition are set forth in the Appendix at A-17.

Ford Motor Company;

General Motors Corporation;

Kennecott Corporation;

National Coal Association;

Natural Resources Defense Council, Inc.;

Pennzoil Company;

State of West Virginia;

Tenneco Oil Company;

United Technologies Corporation; and

Virginia Electric and Power Company, Alabama Power Company, Allegheny Power System, Inc., American Electric Power Company, Inc., Baltimore Gas & Electric Company, Boston Edison Company, Carolina Power & Light Company, Central and South West Services, Inc., Central Illinois Light Company, Central Illinois Public Service Company, Cincinnati Gas & Electric Company, Cleveland Electric Illuminating Company, Columbus & Southern Ohio Electric Co., Commonwealth Edison Company, Consolidated Edison Company of New York, Inc., The Dayton Power & Light Company, Delmarva Power & Light Company, Detroit Edison Company, Duke Power Company, Edison Electric Institute, Florida Power & Light Company, Gulf States Utilities Company, Houston Lighting & Power Company, Illinois Power Company, Indianapolis Power & Light Company, Iowa Public Service Company, Kansas City Power & Light Company, Long Island Lighting Company, Madison Gas and Electric Company, Middle South Utilities, Inc., Minnesota Power & Light Company, Montaup Electric Company, National Rural Electric Cooperative Association, New England Power Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Northeast Utilities Services Company, Northern Indiana Public Service

Company, Northern States Power Company (Minn.), Ohio Edison Company, Oklahoma Gas and Electric Company, Pacific Gas & Electric Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, Potomac Electric Power Company, Public Services Electric & Gas Company, Public Service Company of Indiana, Inc., Rochester Gas & Electric Company, San Diego Gas & Electric Company, South Carolina Electric & Gas Company, Southern California Edison Company, The Southern Company, Tampa Electric Company, Texas Utilities Company, Toledo Edison Company, Union Electric Company, Wisconsin Electric Power Company, Wisconsin Power & Light Company, Wisconsin Public Service Corporation. [2]

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[2] The foregoing list comprises the petitioners who challenged EPA regulations promulgated pursuant to the Clean Water Act and who therefore had an interest in the decision below. In the proceedings below, the D.C. Circuit has also consolidated petitions challenging EPA regulations under other statutes. The latter petitioners, who did not participate in the D.C. Circuit's consideration of the jurisdictional issue involved here, are as follows: Continental Oil Company, The Standard Oil Company (Ohio), The Ferroalloys Association, Allegheny Ludlum Industries, Inc., Kimberly-Clark Corporation, Mining and Reclamation Council of America, Inc., Avtex Fibers, Inc., Edison Electric Institute, *et al.*, Stablex Corporation, American Wood Preservers Institute, G + W Natural Resources Group, American Chrome & Chemicals, Inc., Linden Chemicals & Plastics, Inc., Polysar Limited, The Lubrizol Corporation, Allied Chemical Corporation, The Dow Chemical Company, American Mining Congress, *et al.*, AMAX, Inc., Texas Oil & Gas Corp., National Solid Wastes Management Association, Cincinnati Gas & Electric Company, Atlantic Cement Company, Inc., *et al.*, Tennessee Gas Transmission Company, Colt Industries Inc., Kaiser Steel Corporation, Lone Star Steel Company, Wheeling-Pittsburgh Steel Corporation, Kerr-McGee Nuclear Corporation, Kerr-McGee Refining Corporation, Kerr-McGee Corporation, State of Texas, Duval Corporation, Everest Minerals Corporation, Jefferson Lake Sulphur Company (a division of Occidental Chemical Company), Texasgulf Inc., Independent Petroleum Association of America, and Mid-Continent Oil and Gas Association.

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Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and
ANNE M. GORSUCH, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners Chemical Manufacturers Association, *et al.*, pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit in this case involving the parties named in the above caption.

OPINION BELOW

The opinion of the court of appeals below is unofficially reported at 17 E.R.C. 1007, and is reprinted in the Appendix to this petition at A-1.

JURISDICTION

The order of the court of appeals was entered on March 2, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Section 509(b)(1) of the CWA, 33 U.S.C. § 1369(b)(1), vests the federal courts of appeals with original jurisdiction to review six specified categories of EPA action, including action:

> "in approving or promulgating any effluent limitation or other limitation under section 1311, 1312 or 1316 [of the CWA]." 33 U.S.C. § 1369(b)(1)(E).

With limited exceptions, review of EPA action within the six Section 509(b)(1) categories must be sought within 90 days of the date of the challenged action. Section 509(b)(2) of the Act provides that "[a]ction of the Administrator with respect to which review could have been obtained under [§ 509(b)(1)] shall not be subject to judicial review in any civil or criminal proceeding for enforcement." 33 U.S.C. § 1369(b)(2). Section 509(b)(1) of the Act is set forth below at 14-15.

EPA's regulations governing the procedures for issuing NPDES permits are codified at 40 C.F.R. Parts 122-125.

STATEMENT OF THE CASE

This petition raises a central issue as to the scheme for judicial review of agency action under the Clean Water Act. It is of fundamental importance that the means for seeking judicial review, and the court in which review must be sought, be unambiguous. Petitioners are seeking certiorari because the decision below has created a conflict in the circuits and has upset settled expectations as to the courts which must review EPA actions under the Clean Water Act.

This petition seeks review of a judgment of the D.C. Circuit which broadly and improperly expands court of appeals jurisdiction to cover review of EPA's policy and procedural permit regulations under the Clean Water Act, despite the absence of any explicit reference to such regulations in the applicable judicial review provisions of the Act. The decision below misconstrues a decision of this Court and involves a recurring issue of considerable importance.

A. Legislative And Administrative Background

Congress purposely split jurisdiction over review of EPA's actions under the CWA between the courts of appeals and the district courts. In sharp contrast to the jurisdictional provisions of other environmental statutes, where Congress chose to vest the courts of appeals with jurisdiction to review all agency actions,[1] Congress deliberately limited appellate review under the CWA to six specified categories of EPA actions, only one of which is involved here, namely "approving or promulgating any effluent limitation or other limitation." CWA § 509(b)(1)(E).[2] Jurisdiction to review all other EPA actions under the CWA is vested in the federal district courts by 28 U.S.C. § 1331 and by certain specific review provisions in Section 505 of the CWA, 33 U.S.C. § 1365.

The issue involved here is whether EPA's NPDES regulations are properly reviewable in the courts of appeals under Section 509(b)(1)(E). This issue turns on the distinction between effluent limitations under the Act and EPA's procedural regulations for issuance of NPDES permits.

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[1] *See, e.g.*, 42 U.S.C. § 7607(b)(1) (Clean Air Act); 42 U.S.C. § 300j-7 (Safe Drinking Water Act); 42 U.S.C. § 6976 (Resource Conservation and Recovery Act). *See also* n.18 below.

[2] 33 U.S.C. § 1369(b)(1)(E). Section 509(b)(1) is set forth below at 14-15.

The CWA prohibits the discharge of any pollutant into the nation's waters unless and until the discharger has obtained a NPDES permit under Section 402 of the Act, 33 U.S.C. § 1342. NPDES permits specify the types and amounts of pollutants an individual source may discharge. These specifications are based primarily on numerical "effluent limitations" guidelines promulgated by EPA pursuant to Sections 301 and 304 of the Act, 33 U.S.C. §§ 1311, 1314, which set forth the amounts of various pollutants which may be discharged by particular industries based upon the application of appropriate treatment technology. Such numerical effluent limitations have been before the Court previously,[3] but are not involved here.[4]

The NPDES regulations in question, 40 C.F.R. Parts 122-125, establish detailed policies and procedures for issuing and denying NPDES permits under Section 402 of the CWA. For example, the regulations govern who may sign permit applications and monitoring reports (40 C.F.R. § 122.6), the duration and termination of permits (40 C.F.R. §§ 122.9, 122.16), the sharing of information by states with EPA (40 C.F.R. § 123.10), EPA review of state permits (40 C.F.R. § 123.75), *ex parte* communications during permit hearings (40 C.F.R. § 124.78), and cross-examination during non-adversary panel hearings (40 C.F.R. § 124.121).

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[3] *See* E. I. du Pont de Nemours & Company v. Train, 430 U.S. 112 (1977).

[4] The Act also contains separate provisions governing discharges of pollutants by new sources and requiring the establishment of toxic pollutant standards and water quality standards. 33 U.S.C. §§ 1316, 1317, 1312 and 1313, respectively. These new source performance standards, toxic pollutant standards and water quality standards, which also form the basis for numerical limitations in permits, are not at issue in this case.

B. Proceedings Below

The current NPDES procedural rules, which extensively revised prior rules, were first promulgated on June 7, 1979 (44 *Fed. Reg.* 32854-956). The rules were then repromulgated, in slightly modified form, as part of EPA's consolidated permit regulations, 45 *Fed. Reg.* 33290-588 (May 19, 1980). These procedural rules are now codified at 40 C.F.R. Parts 122-125.

Challenges to both the June, 1979 NPDES and May, 1980 "consolidated permit" regulations were filed by industry and environmental groups in both federal district courts[5] and federal courts of appeals. Industry petitioners have consistently maintained that only the federal district courts have jurisdiction over these challenges. However, in light of the uncertainty over the courts of appeals jurisdiction under Section 509(b)(1) of the Clean Water Act, industry petitioners filed "protective" petitions for review in the courts of appeals, in order not to risk forfeiting entirely their rights to review should a court of appeals later decide the jurisdictional issue in its own favor.[6] This forfeiture problem arises because Section 509(b)(1) requires petitions for review in the courts of appeals to be filed within 90 days of the challenged Agency action. Failure to do so precludes the raising in any subsequent enforcement proceeding of any issue that could have been raised before a court of appeals. 33 U.S.C. § 1369(b)(2).

The confusion over this critical jurisdictional issue is graphically illustrated by EPA's own change in position on this

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[5] American Iron & Steel Institute, *et al.* v. Costle, No. 79-1218 (W.D. Pa.); American Petroleum Institute, *et al.* v. Costle, No. 79-0858, (W.D. La.); Appalachian Power Co., *et al.* v. Costle, No. 79-0188 (W.D. Va.); Chemical Manufacturers Ass'n., *et al.* v. EPA, No. 79-0184 (W.D. Va.); and Natural Resources Defense Council, Inc. v. Costle, No. 79-2948 (D.D.C.).

[6] *See* p. 9 n.12 below. The various petitions were eventually consolidated in the D.C. Circuit.

point. Throughout the long history of these proceedings, EPA has insisted that Section 509(b)(1) of the CWA does *not* vest original jurisdiction in the courts of appeals to review the challenged procedural regulations. The preamble to the June, 1979 regulations[7] stated unequivocally that review in a court of appeals under Section 509(b)(1) "is not provided for actions in issuing general regulations governing the issuance of NPDES permits." 44 *Fed. Reg.* 32855 (June 7, 1979). In pleadings filed in the various federal court proceedings, the Agency has reiterated that:

> "Neither the 1979 NPDES regulations nor the NPDES elements of the Consolidated Regulations fall within any of the categories specified in § 509(b)(1)."[8]

Not until EPA filed its brief below did it take the position that the challenged procedural regulations were "effluent limitation[s] or other limitation[s]" under Section 509(b)(1)(E).

The question of the jurisdiction of the court under Section 509(b)(1) of the CWA was presented to the D.C. Circuit on motion of the industry petitioners to dismiss their protective petitions for lack of jurisdiction. The industry parties argued that Section 509(b)(1) of the CWA does not apply to the NPDES procedural regulations. Industry petitioners also argued that substantial policy grounds exist for a narrow reading of the judicial review provisions of the CWA.

After briefing and oral argument, the D.C. Circuit denied the motion, holding that the NPDES regulations are "effluent limitation[s] or other limitation[s]" under Section 509(b)(1)(E) of the Act. The court acknowledged that, on its face, this

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[7] As the court below noted, these regulations are the same as the current NPDES regulations, with only "slight substantive modifications." Appx. A-4.

[8] EPA Motion to Transfer at 6 (August 22, 1980), *filed in* Virginia Electric and Power Company, *et al.* v. EPA, No. 79-1347 (4th Cir.).

provision appears to cover only numerical limitations on pollutant discharges, as also indicated by the usage of this phrase in the citizen suit provision of the Act. 33 U.S.C. § 1365(a). However, the court avoided this conclusion with the explanation that Congress sometimes uses the same word with different meanings. Appx. A-6 n.10. The court also admitted that the Third Circuit "has adopted the position industry urges here," but concluded that it did not agree with that Circuit. Appx. A-7. The D.C. Circuit expressed its view that national uniformity is "an important goal in dealing with broad regulations," and is "best served by initial review in a court of appeals." Appx. A-10 n.15. The court did not cite any statutory language or legislative history to support these conclusions.

As a result of the D.C. Circuit's determination, industry petitioners must litigate the merits of these and all other arguably similar regulations in the courts of appeals, or lose their right to challenge the substantive validity of such regulations in any subsequent enforcement proceedings.

REASONS FOR GRANTING THE WRIT

The Court should grant the petition for certiorari in this case for three reasons that the Court has traditionally deemed to warrant plenary review. First, the decision below creates a direct conflict among the circuits, and has upset settled expectations concerning judicial review under the Clean Water Act. Second, the decision below raises a major jurisdictional problem of nationwide importance that will continue to plague both the federal district courts and the federal courts of appeals, and to waste the time, energy, and resources of courts and litigants alike, unless resolved by this Court.[9] And third, the

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[9] *See, e.g.*, Harrison v. PPG Industries, Inc., 446 U.S. 578, 586 (1980), in which this Court granted certiorari "because of the importance of determining the locus of judicial review of the actions of EPA."

decision below is at odds with the language and history of the Clean Water Act. It presents fundamental questions of imperative public importance which only this Court can determine concerning the authority of the federal courts of appeals to circumvent the limits on their jurisdiction imposed by Congress, and the interpretation of a statute which, since its enactment, has occasioned considerable litigation. [10]

I. The Decision Below Creates A Conflict In the Circuits And Departs From Prior Decisions Of This Court

As the court below acknowledged, its decision is in direct conflict with the decision of the Court of Appeals for the Third Circuit in *American Iron & Steel Institute* ("AISI") v. *EPA*, 543 F.2d 521 (3d Cir. 1976), which held that the courts of appeals are without jurisdiction to review NPDES regulations that merely "prescribe the policy and procedures to be followed in connection with applications for permits." 543 F.2d at 526. A revised version of the regulations at issue in that case is part of the regulations under challenge here. [11] The court in *AISI* noted that the Act defined an effluent limitation as a restriction on the quantities, rates or concentrations of pollutants, and held that EPA's procedural regulations were not subject to review under Section 509(b) of the CWA. Although the D.C. Circuit advanced several theories on which to explain its disagreement with *AISI* v. *EPA*, the court acknowledged that it "specifically rejected the reasoning of *AISI*." Appx. A-7.

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[10] It is well established in this Court that a writ of certiorari may be granted to review an order below denying a motion to dismiss for lack of jurisdiction where, as here, the petition presents legal issues of great public importance that are fundamental to the further conduct of the case. Land v. Dollar, 330 U.S. 731 (1947); American Power & Light Co. v. S.E.C., 325 U.S. 385 (1945); Ickes v. Associated Industries of New York State, Inc., 320 U.S. 707 (1943) (per curiam).

[11] 40 C.F.R. §§ 122.63(g), 122.63(h).

The decisions of the two circuits cannot be squared. In *AISI*, the court recognized the clear jurisdictional barrier to federal appellate review of regulations that "do no more than prescribe the policy and procedures to be followed in connection with applications for permits," 543 F.2d at 526, stating:

> "[W]e do not believe, in view of the explicit and limited provisions of 33 U.S.C. § 1369(b)(1)(E) and (F), that Congress intended us to engage in deliberations of this sort in the absence of a full and comprehensive record." 543 F.2d at 528.

The D.C. Circuit's effort to explain its disagreement with *AISI* by stating that the Third Circuit has confused jurisdiction with "considerations of ripeness for review," Appx. A-8, illustrates the lack of clarity in its own reasoning. Under the D.C. Circuit's approach, petitioners would be forced to file protective petitions in the courts of appeals [12] as soon as any general procedural NPDES regulation is promulgated that *might* adversely affect the source in a future permit or enforcement proceeding, and then move to dismiss the petitions on ripeness grounds, [13] in order to be sure of preserving later review in the proper forum in the context of a permit or enforcement proceeding. We submit that the Third Circuit was neither confused nor incorrect in holding that Congress, by narrowly and expressly limiting original court of appeals jurisdiction under Section 509(b)(1), intended to preclude, not require, such a result.

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[12] The Court of Appeals for District of Columbia Circuit encouraged the filing of "protective" petitions in other contexts. *See, e.g.*, Investment Company Institute v. Board of Governors of the Federal Reserve System, 551 F.2d 1270 (D.C. Cir. 1977).

[13] In upholding its jurisdiction to review the challenged regulations, the court below stated, "The parties have not yet briefed the issue of the ripeness of the CPR's, and we do not today hold that any of them are ripe for review. We hold only that this court has authority under § 509(b)(1)(E) to review any CPR's that are ripe." Appx. A-8 n.13.

The court below also speculated that this Court's decisions in *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977), and *Crown Simpson Pulp Co.* v. *Costle*, 445 U.S. 193 (1980), decided after *AISI*, might have caused the Third Circuit to give a more "practical" and less "cramped" construction to the limits on its jurisdiction under Section 509(b). Appx. A-11. The D.C. Circuit's conclusion that the reasoning of the *du Pont* and *Crown Simpson* cases "strongly supports" its decisions (Appx. A-11) instead underscores its departure from the principles in these cases. Neither decision permits a court of appeals to ignore the express limits on its jurisdiction in order to reach a result it considers more "practical" than that directed by Congress. Moreover, as the court below acknowledged, Appx. A-11 n.16, the regulations at issue in those cases, particularly the *du Pont* case, were a far cry from the general policy and procedural regulations at issue here. In the *du Pont* case, the Court held merely that specific industry-wide effluent limitations guidelines setting forth numerical limitations fell within the courts of appeals' jurisdiction under Section 509(b)(1)(E) of the Act. That result is wholly consistent with the Third Circuit's holding in *AISI*. The same cannot be said for the D.C. Circuit's effort to use the *du Pont* decision as a wedge to expand its jurisdiction over regulations wholly unrelated to specific numerical "effluent limitation[s] or other limitation[s]."

The broad construction given to Section 509(b) of the CWA by the D.C. Circuit is also inconsistent with the approach taken by the Second Circuit in interpreting this judicial review provision:

> "[I]t seems to us that when a jurisdictional statute sets forth with such specificity the actions of an administrative agency which may be reviewed in the courts of appeals, a litigant seeking such review of an action that is not specified bears a particularly heavy burden."

Bethlehem Steel Corp. v. *EPA*, 538 F.2d 513, 517-18 (2d Cir. 1976). *See also, Central Hudson Gas & Electric Corp.* v. *EPA*,

587 F.2d 549, 555-57 (2d Cir. 1978). We submit that this approach taken by the Second and Third Circuits is more sound than the expansive assertion of jurisdiction by the D.C. Circuit below.

II. The Decision Below Involves Recurring Questions Concerning Judicial Review Under The Clean Water Act

Allowing the decision below to stand would raise a host of new problems eliminated by Congress' narrow and careful delineation of court of appeals' jurisdiction in Section 509(b)(1). If regulations as broad and general as those at issue here are considered to be "effluent limitation[s] or other limitation[s]," it is difficult if not impossible to limit the term rationally in future cases. While the court below insisted that its decision "does not turn § 509(b)(1) into a comprehensive review provision that Congress did not intend it to be," Appx. A-8 n.14, it fails to provide any basis whatsoever for drawing reasonable distinctions. [14]

As a result of the conflict between the circuits on this critical jurisdictional point, the many thousands of industrial dischargers throughout the country that are subject to NPDES requirements can have no certainty as to the proper forum for judicial review of any NPDES regulations. The consequence will necessarily be a deluge of "protective" petitions in the federal courts of appeals each and every time NPDES regulations are promulgated.

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[14] As a result, virtually any restrictions of any sort on industrial dischargers (and there has yet to be an NPDES regulation that does not arguably impose *some* type of restriction) must now be challenged within 90 days in the courts of appeals. The standard announced by the court below is whether the regulations impose any " 'restriction on the untrammeled discretion of the industry' that existed before passage of the CWA." Appx. A-9.

Considering that the Clean Water Act and the regulations thereunder are not only one of the most important and complex but also one of the most hotly debated and extensively litigated regulatory programs in existence today,[15] the potential burden on the courts and on litigants is truly staggering. The procedural background of this case alone helps illustrate the magnitude of the problem. Because of the uncertainty as to court of appeals jurisdiction over the consolidated permit regulations, no fewer than twelve petitions for review were filed in the courts of appeals, and at least five complaints were filed in the district courts. After three years of active litigation, the parties are no nearer to litigating the merits of the challenged regulations than they were in June, 1979. In fact, given the D.C. Circuit's statements on the "ripeness" issue, another long, preliminary issue lies ahead to be briefed and decided by that court.[16]

Although the court below apparently believed that its decision would lessen the burden on the courts by requiring initial review in a court of appeals of such regulations, Appx. A-9-10, and A-10 n.15, that is clearly not the case. As indicated above, the D.C. Circuit has stated that many of such regulations may not be ripe for review, and might thus be reviewable in a particular factual context in connection with an enforcement proceeding in a district court or a suit in a court of appeals concerning the issuance of an NPDES permit. To preserve such later review, however, petitioners will be compelled to file protective petitions in the courts of appeals and then move to dismiss the petitions on ripeness grounds, thereby adding to the courts' burdens.

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[15] This Court's decisions in *Crown Simpson* and *du Pont*, *supra*, cite only a few of the many district court and court of appeals decisions on NPDES issues.

[16] The parties before the D.C. Circuit agree that certain of the NPDES issues are ripe for review but others are not yet ripe, and have advised that court of their intention soon to submit a motion to dismiss the unripe issues.

Moreover, with regard to future challenges to regulations under the CWA, the D.C. Circuit's opinion has left even the status of court of appeals jurisdiction in complete confusion. The court below noted that:

> "Industry petitioners argue that if the CPR's are reviewable directly in a court of appeals, virtually any action under the CWA will be so reviewable, thus contravening the congressional intent. EPA contends however — and industry does not dispute — that certain actions under the CWA are outside of § 509(b)(1). *See* EPA Brief at 27. * * * We do not decide that we would lack jurisdiction in all the cases EPA lists. . .." Appx. A-8 n.14.

Virtually all EPA regulations under the Clean Water Act will from now on be subject to challenge in *both* the federal courts of appeals [17] and the district courts, where burdensome litigation and conflicting decisions as to jurisdiction are again likely. Only this Court can bring to a halt the tremendous waste of judicial resources that will necessarily follow if the D.C. Circuit's decision is allowed to stand.

III. The Decision Below Contravenes Congress' Limited Grant Of Jurisdiction To The Courts Of Appeals And Conflicts With The Structure And Purpose Of The Clean Water Act

It is one of the most basic principles of federal jurisdiction that the courts of appeals are courts of limited jurisdiction, with only such jurisdiction as is expressly granted to them by statute. *American Federation of Labor* v. *NLRB*, 308 U.S. 401 (1940); *Assessors* v. *Osbornes*, 9 Wall. 567, 76 U.S. 567 (1869). Although there may be excellent policy reasons for doing so, the courts may not expand that limited jurisdiction without express authorization from Congress. *A.F. of L.* v. *NLRB*, 308

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[17] As noted at p.5 above, the preclusive nature of Section 509(b)(1) review in effect mandates such "protective" suits.

U.S. at 411-412. It is the responsibility of this Court to ensure that the statutory limits and bounds of the lower courts' jurisdiction are not exceeded. *Sumner* v. *Mata*, 449 U.S. 539, 547 n.2 (1981); *Louisville & Nashville Railroad Co.* v. *Mottley*, 211 U.S. 149, 152 (1908).

While Congress could have vested original jurisdiction in the courts of appeals to review virtually all regulations of general applicability under the CWA promulgated by EPA, as it did under other environmental statutes,[18] it declined to do so. Instead, Section 509(b)(1) provides for original court of appeals jurisdiction over EPA actions in only six enumerated situations. These are EPA actions:

> "(A) in promulgating any standard of performance under section 1316 of this title,
>
> "(B) in making any determination pursuant to section 1316(b)(1)(C) of this title,
>
> "(C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title,
>
> "(D) in making any determination as to a State permit program submitted under section 1342(b) of this title,

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[18] *See, e.g.*, 42 U.S.C. § 7607(b)(1) (authorizing court of appeals review of eight specified categories of action and "any other nationally applicable regulations promulgated or final action taken" under the Clean Air Act); 42 U.S.C. §§ 300j-7(a)(1) and (a)(2) (authorizing District of Columbia Court of Appeals review of four specified categories of action and "any general regulation for the administration" of the Underground Injection Control program under the Safe Drinking Water Act, and court of appeals review in the appropriate circuit of "any other regulation"); and 42 U.S.C. § 6976(a)(1) (authorizing the filing with courts of appeals of "a petition for review of action of the Administrator in promulgating any regulation" under the Resource Conservation and Recovery Act).

> "(E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1316 of this title, and
>
> "(F) in issuing or denying any permit under section 1342 of this title, ..." 33 U.S.C. § 1369(b)(1).

As is apparent from the language of Section 509(b)(1), these six enumerated actions fall into two basic categories: (1) review of final agency action in approving or disapproving state NPDES programs and individual NPDES permits, and (2) review of the technical effluent standards and limitations required by the Agency to be incorporated, where applicable, in all NPDES permits.

The language and legislative history of the Act, as well as the relevant case law, confirm that the phrase "effluent limitation or other limitation," as contained in Section 509(b)(1)(E), refers to numerical restrictions on the quantities of pollutants that may be discharged. The phrase "effluent limitation" is defined in the Act as:

> "[A]ny restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

"Effluent limitations" have been described as "a term of art . . . restricting the quantities of pollutants that enterprises in a given industry may discharge." [19]

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[19] Crown Simpson Pulp Co. v. Costle, 599 F.2d 897, 902 (9th Cir. 1979), *reversed on other grounds*, 445 U.S. 193 (1980). "[E]ffluent limitations are technical specifications of the quantities of various polluting substances that a permittee may lawfully discharge." Montgomery Environmental Coalition v. Costle, 646 F.2d 568, 574 (D.C. Cir. 1980). Effluent limitations are "specified maximum levels of pollution allowed to be discharged by an individual source." Environmental Defense Fund, Inc. v. Costle, 657 F.2d 275, 279 (D.C. Cir. 1981). *See also* EPA v. California ex rel. State Water Resources Control Board, 426 U.S. 200, 204-05 (1976).

Although the phrase "effluent limitation or other limitation" is not defined in the Act, the phrase is used in no fewer than eight other sections of the Act. Not a single one of these sections refers, either expressly or by implication, to regulations other than numerical specifications on pollutant levels.[20] The citizen suit provision of the Act authorizes any interested person to commence a suit in federal district court against "any person . . . in violation of . . . an effluent standard or limitation under this chapter." 33 U.S.C. § 1365(a)(1). This section, which defines the violation of an "effluent standard or limitation" to include "an effluent limitation or other limitation" under Sections 301 and 302, confirms that only numerical specifications

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[20] *See* 33 U.S.C. §§ 1318(a) (record keeping relating to the development of "any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard of performance"); 1341(a)(4) review of the manner in which a facility shall be operated to insure that no "effluent limitations or other limitations or other applicable water quality requirements" will be violated); 1341(b) (EPA required to provide information on "effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria" to the states or other Federal departments or agencies); 1341(d) (certification required to set forth "effluent limitations and other limitations, and monitoring requirements" to assure compliance with effluent limitations and standards); 1362(17) ("schedule of compliance" defined to include enforceable sequence of actions leading to compliance with "an effluent limitation, or other limitation, prohibition or standard"); 1365(f) (for purposes of citizens' suits, "effluent standard or limitation" is defined to include "an effluent limitation or other limitation under section 1311 or 1312"); 1367(d) (employee protection provisions do not apply to deliberate violations of "any prohibition of effluent limitation or other limitation"); and 1370 (states may not adopt or enforce any "effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance" less stringent than federal standards).

were intended. 33 U.S.C. § 1365(f). As the Senate Committee on Public Works explained the citizen suit provision:

> "Enforcement of pollution regulations is not a technical matter beyond the competence of the courts. The citizen suit provision is consistent with principles underlying the Federal Water Pollution Control Act, *that is the development of clear and identifiable* requirements. Such requirements should provide manageable and precise benchmarks for enforcement. [21]

There is no question that the D.C. Circuit has asserted jurisdiction over regulations which have virtually nothing to do with identifiable limitations on discharges. The court below so acknowledged:

> "These regulations do not set any numerical limitations on pollutant discharge. Instead, they are a complex set of procedures for issuing or denying NPDES permits . . .."
>
> "The CPR's, everyone agrees, are far more general [than regulations based on precise, technical information and applied to particular types of point sources] and rest dominantly on policy choices." Appx. A-4, A-9.

The court nevertheless determined that, as a matter of policy, it would be more "practical" to extend its jurisdiction under Section 509(b)(1)(E) to include such regulations. Appx. A-11. It is clear from the language of the statute that such an extension of the court of appeals' jurisdiction is unwarranted. [22]

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[21] S. Rep. No. 92-414, 92d Cong., 1st Sess. 81 (1971) (emphasis added).

[22] Significantly, the court below cited nothing in the language or legislative history of the Act that would warrant expanding its jurisdiction in this fashion. Moreover, even if the statute and legislative history were at all ambiguous on that point — which industry petitioners submit they are not — the maxims of *noscitur a sociis* and *ejusdem generis* apply "in order to avoid the giving of unintended breadth to the Acts of Congress." Jarecki v. G D. Searle & Co., 367 U.S. 303, 307 (1961). *See also*, Third National Bank in Nashville v. Impac Limited, Inc., 432 U.S. 312, 322-23.

Whether or not the various policy reasons cited by the court below [23] are valid bases for expanding court of appeals jurisdiction is an issue for Congress. *A.F. of L.*, 308 U.S. at 411-412. In the absence of such congressional authority, the courts are without power to take such action unilaterally, even for the best of "policy" reasons. *Id. See also, Harrison*, 446 U.S. at 593.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 1982

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[23] The primary policy reasons given by the court below are (1) national uniformity, (2) judicial economy, and (3) court of appeals expertise in reviewing "broad policy-oriented rules." Appx. A-9-10 and A-10 n.15.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1607

NATURAL RESOURCES DEFENSE COUNCIL, INC., PETITIONER

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and
ANNE M. GORSUCH, ADMINISTRATOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY, RESPONDENTS

CHEMICAL MANUFACTURERS ASSOCIATION,
AMERICAN IRON & STEEL INSTITUTE,
EDISON ELECTRIC INSTITUTE, ET AL., INTERVENORS

And Consolidated Cases Nos. 80-1660, 80-1723, 80-1733, 80-1740, 80-1741, 80-1809, 80-1821, 80-1837, 80-1875, 80-1881, 80-1889, 80-1909, 80-1914, 80-1915, 80-1923, 80-1924, 80-1927, 80-1928, 80-1929, 80-1931, 80-1932, 80-1934, 80-1955, 80-1966, 80-1970, 80-1975, 80-1978, 80-1984, 80-1987, 80-1989, 80-1999, 80-2002, 80-2004, 80-2007, 80-2114, 80-2279, 80-2521, 81-1569, 81-1570, 81-1571, 81-1572, 81-1573, 81-1574, 81-1575, 81-1576, 81-1577, 81-1578, 81-1579, 81-1708, 81-1709, 81-1746, 81-1747, 81-1748, 81-1749, and 81-1750

On Motion to Dismiss

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Argued December 15, 1981

Decided March 2, 1982

Gene W. Lafitte, with whom *J. Berry St. John, Jr.*, *George J. Domas*, and *Robert E. Holden* were on the brief, for petitioners American Iron and Steel Institute, et al.

Alan W. Eckert, Acting Senior Litigator, Office of General Counsel, Environmental Protection Agency, with whom *Anthony Liotta*, Acting Assistant Attorney General, *Donald W. Stever*, Chief, Environmental Defense Section, and *Elizabeth Stein* and *David T. Buente, Jr.*, Attorneys, Environmental Defense Section, were on the brief, for respondent.

Ronald J. Wilson was on the brief for petitioner Natural Resources Defense Council, Inc.

Before BAZELON, *Senior Circuit Judge*, and MIKVA and GINSBURG, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GINSBURG.

GINSBURG, *Circuit Judge*: These consolidated cases involve numerous challenges to Consolidated Permit Regulations (CPR's)[1] issued by the Environmental Protection Agency (EPA). Industry petitioners[2] contend that initial jurisdiction to review the National Pollutant Dis-

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[1] 40 C.F.R. pts. 122-125 (1981).

[2] Numerous industrial parties are represented by common counsel at this stage of the proceedings, and we refer to them as "industry petitioners" or simply "industry." The Natural Resources Defense Council (NRDC) is also a petitioner, but it opposes the motion to dismiss filed by industry petitioners. Certain other petitioners, such as the State of West Virginia, have taken no position on the motion to dismiss.

charge Elimination System (NPDES) portion of the CPR's does not reside in this court (or any other court of appeals).[3] They have moved to dismiss all petitions for review[4] insofar as the petitions challenge NPDES-related CPR's. The parties have fully briefed and argued the motion to dismiss. We hold that section 509(b)(1)(E) of the Clean Water Act (CWA), 33 U.S.C. § 1369(b)(1)(E) (1976), vests initial authority to review the challenged regulations in the courts of appeals. We therefore deny the motion to dismiss.

I.

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) (1976), forbids anyone to discharge any pollutant into navigable waters except pursuant to an NPDES permit issued under CWA § 402, 33 U.S.C. § 1342 (1976 & Supp. III 1979). These permits list, for a specific discharger, the types and amounts of pollutants that may be discharged. Section 402 requires determina-

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[3] Our jurisdiction to review the non-NPDES aspects of the CPR's is conceded and, indeed, is exclusive. *See* NRDC v. EPA, No. 80-1607, slip op. at 9 (D.C. Cir. Nov. 4, 1980) (per curiam).

[4] Industry petitioners seek dismissal of their own petitions for review as well as those filed by NRDC and others. Because of uncertainty as to the appropriate forum for initial review of the NPDES-related CPR's, both NRDC and some of the industry petitioners have sought to challenge these CPR's by filing complaints in district courts. *See* NRDC v. EPA, No. 80-1607, slip op. at 12 n.10 (D.C. Cir. Nov. 4, 1980) (per curiam) (collecting cases). If we were to grant the motion to dismiss, these district courts would have to decide if they had general federal question jurisdiction to entertain the pending complaints. *See* 28 U.S.C.A. § 1331 (West Cum. Supp. 1981); *see also* E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 124-25 (1977) (regulations not initially reviewable in a court of appeals under § 509(b)(1)(E) may be reviewed "only in the District Court, if anywhere"). One district court has already asserted that it has jurisdiction to review NPDES regulations. American Petroleum Inst. v. Costle, No. 79-0858, slip op. at 2 (W.D. La. July 27, 1981).

tion of the amounts listed in any given permit in compliance with, inter alia, the requirements of sections 301 and 306, 33 U.S.C. §§ 1311, 1316 (1976 & Supp. III 1979). Those two sections, in turn, require the Administrator of EPA to establish by regulation effluent limitations, based on pollution-control technology, for sources of pollutants.[5]

EPA promulgated a set of NPDES regulations in 1979. These regulations do not set any numerical limitations on pollutant discharge. Instead, they are a complex set of procedures for issuing or denying NPDES permits. Several parties, uncertain as to the appropriate federal forum, sought review in both courts of appeals and district courts. EPA repromulgated these regulations, with slight substantive modifications, in 1980 as part of the CPR's.[6] Once again, challenges were filed in both federal courts of appeals and federal district courts. These challenges involve both NPDES and non-NPDES aspects of the CPR's. Through a complex procedural history, all court of appeals actions have been consolidated here.[7]

Industry contends that no statute vests initial jurisdiction in courts of appeals, so a challenge to NPDES-related CPR's may be instituted only under the general federal question jurisdiction of the district courts. Thus the industry petitioners have filed their motion to dismiss. EPA

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[5] The Administrator may also authorize any state to run an NPDES program in lieu of the federal program. Standards for the Administrator's approval of a state-run program are essentially identical to the standards that govern the federal program. CWA § 402(b), 33 U.S.C. § 1342(b) (1976 & Supp. III 1979).

[6] For a fuller discussion of the CPR's, which govern five separate EPA permit programs, *see* NRDC v. EPA, No. 80-1607, slip op. at 8-11 (D.C. Cir. Nov. 4, 1980) (per curiam).

[7] For a partial summary of this history, *see* NRDC v. EPA, No. 80-1607 (D.C. Cir. Nov. 4, 1980) (per curiam).

opposes this motion, citing CWA § 509(b)(1), 33 U.S.C. § 1369(b)(1) (1976), which provides:

> Review of the Administrator's action . . . (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 131[6] of this title . . . may be had by any interested person in the Circuit Court of Appeals of the United States . . . .

EPA contends that this statutory section covers the NPDES-related CPR's.[8]

II.

Section 509(b)(1)(E) authorizes the courts of appeals to review the promulgation of "any effluent limitation or other limitation under [CWA § 301, 302, or 306,] section 1311, 1312, or 131[6] of this title." "Effluent limitation" is defined in CWA § 502(11), 33 U.S.C. § 1362(11) (1976), as "any restriction established by a State or the Administrator on quantities, rates, and concentrations of . . . constituents which are discharged . . . , including schedules of compliance." At first glance, one might read subsection E to confine this court's review to EPA's establishment of numerical limitations on pollutant discharges.[9] Two aspects of the statutory language itself, however, indicate that the provision has a wider range: (1) subsection E authorizes review of an "other limitation," not just an effluent limitation; and (2) section 502(11) defines "effluent limitation" as "*any* restriction"

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[8] EPA also asserts that we have initial review authority under 33 U.S.C. § 1369(b)(1)(D) (1976) and under the doctrine of ancillary jurisdiction. Because we find § 509(b)(1)(E) a sufficient basis for our authority to review the NPDES-related CPR's, we express no opinion on EPA's other arguments.

[9] *Cf.* Montgomery Envtl. Coalition v. Costle, 646 F.2d 568, 574 (D.C. Cir. 1980) ("[E]ffluent limitations are technical specifications of the quantities of various polluting substances that a permittee may lawfully discharge.").

on the amounts of pollutants discharged, not just a numerical restriction.

The phrase "effluent limitation or other limitation" in section 509(b)(1)(E)[10] has in fact been interpreted to include more than numerical limitations. In *NRDC v. EPA*, No. 79-1639 (D.C. Cir. May 7, 1981), we addressed a challenge to regulations governing applications for variances from the limitations imposed on municipal sewage plants. Those regulations set no numerical limitations; instead they establish "criteria and standards to be applied by EPA in acting on . . . requests for modifications to the secondary treatment requirements." 40 C.F.R. § 125.56 (1981). We rejected a challenge to our jurisdiction because "[a]s a practical matter [the regulations] restrict the discharge of sewage by limiting the availability of a variance to a class of applicants which does not include all coastal municipalities." Slip op. at 12.

In *VEPCO v. Costle*, 566 F.2d 446 (4th Cir. 1977), the challenge was to standards regulating the construction and design of cooling water intake structures. The court agreed that these standards were not effluent limita-

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[10] This phrase also appears in § 505, 33 U.S.C. § 1365 (1976), which describes what sort of violations may result in citizen suits against a polluter. Industry argues from the legislative history of § 505 that the CPR's are not an "effluent limitation or other limitation." This may be so for purposes of § 505, but that does not prevent the CPR's from being an "effluent limitation or other limitation" for the very different purposes served by § 509(b)(1). "It is not unusual for the same word to be used with different meanings in the same act . . . ." Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932); *see also* Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L.J. 333, 337 (1933) ("The tendency to assume that a word which appears in two or more legal rules, and so in connection with more than one purpose, has and should have precisely the same scope in all of them, runs all through legal discussions. It has all the tenacity of original sin and must constantly be guarded against.").

tions because they were "concerned with structures . . . , not with discharges." *Id.* at 449. Nonetheless, the court held the standards reviewable as an "other limitation": "[T]he . . . regulations here do refer to information that must be considered in determining the type of intake structures that individual point sources may employ, and, by that token, they are limitations." *Id.* at 450.

One court, however, has adopted the position industry urges here. In *American Iron & Steel Institute (AISI) v. EPA*, 543 F.2d 521 (3d Cir. 1976), the court held that it had no jurisdiction to review EPA's "net/gross" regulation, which states when a permittee may receive a "credit" for pollutants in its intake water, and a revised version of which is contained in section 122.63(g) and (h) of the CPR's. The court held that the net/gross regulation was not an effluent limitation because it merely "prescribe[d] the policy and procedures to be followed in connection with applications for permits." 543 F.2d at 526.

We believe the approach taken in *NRDC* and *VEPCO* is sounder than that taken in *AISI*. First, of course, *NRDC* is binding precedent in this circuit, and in *NRDC* we specifically rejected the reasoning of *AISI*. *NRDC*, slip op. at 13. Second, the *AISI* court, unlike the Fourth Circuit in *VEPCO*, did not consider the possibility that something that was not an "effluent limitation" could nonetheless be an "effluent limitation or other limitation." [11] Third, the *AISI* court seemed more concerned with the timing of judicial review than with identification of the

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[11] Because § 509(b)(1)(E) provides for our review of both effluent limitations and other limitations, we see no need to determine that the CPR's are one or the other. It suffices that they fit within the statutory disjunctive phrase. *Compare* NRDC v. EPA, No. 79-1639, slip op. at 14 (D.C. Cir. May 7, 1981) ("effluent limitations"), *with* VEPCO v. Costle, 566 F.2d 446, 449-50 (4th Cir. 1977) ("other limitation").

forum for review;[12] thus the court may have blended considerations of ripeness for review[13] into a determination of its statutory authority to entertain a review petition properly timed. The statute makes no explicit statement about ripeness for review; it simply sets out the actions to be reviewed in courts of appeals rather than district courts.[14] In short, the issue as it is presented

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[12] *See, e.g.*, 543 F.2d at 528 (declining to consider net/gross regulation "at this stage" and "in the absence of a full and comprehensive record"); *id.* at 529 ("The issue of district court jurisdiction is not before us, and we therefore express no view as to that contention.").

[13] *AISI* was cited in support of our decision in Diamond Shamrock Corp. v. Costle, 580 F.2d 670, 674 (D.C. Cir. 1978), that a net/gross regulation was not ripe for review. The parties have not yet briefed the issue of the ripeness of the CPR's, and we do not today hold that any of them are ripe for review. We hold only that this court has authority under § 509(b)(1)(E) to review any CPR's that are ripe.

[14] *See, e.g.*, Crown Simpson Pulp Co. v. Costle, 445 U.S. 193, 196-97 (1980) (per curiam); E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 127 n.18 (1977); VEPCO v. Costle, 566 F.2d 446, 447 (4th Cir. 1977). The jurisdiction of the district courts in CWA cases may not be entirely settled. *See supra* note 4. It is clear, however, that Congress intended that some actions under the CWA *not* be subject to direct review in a court of appeals. Compare CWA § 509(b)(1) (six specified categories of actions under CWA) *with, e.g.*, Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1) (Supp. III 1979) (eight specific categories and "any other nationally applicable regulations promulgated, or final action taken"). Industry petitioners argue that if the CPR's are reviewable directly in a court of appeals, virtually any action under the CWA will be so reviewable, thus contravening the congressional intent. EPA contends, however—and industry does not dispute—that certain actions under the CWA are outside of § 509(b)(1). *See* EPA Brief at 27. These include, among others, rules governing hazardous substances, vessel wastes, and construction grants. We do not decide that we would lack jurisdiction in all the cases EPA lists, but we are satisfied that our decision as to the CPR's does not turn § 509(b)(1) into a comprehensive review provision that Congress did not intend it to be.

here, whether jurisdiction lies initially in courts of appeals or in district courts, was not at the center of the *AISI* court's attention. Fourth, *AISI* was decided before *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977), and *Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193, 196-97 (1980) (per curiam), two Supreme Court cases that influence our decision, *see infra* p. 11, and might have influenced the *AISI* court to decide the other way, *see NRDC v. EPA*, No. 79-1639, slip op. at 13-14 (D.C. Cir. May 7, 1981).

NRDC and *VEPCO* securely support the conclusion that we have authority to review the CPR's. Some of the CPR's, *see, e.g.*, 40 C.F.R. §§ 122.54, .60, .62-.66 (1981), like the variance regulations in *NRDC*, restrict who may take advantage of certain provisions or otherwise guide the setting of numerical limitations in permits. Like the regulations in *VEPCO*, the CPR's are "a limitation on point sources and permit issuers" and "a restriction on the untrammeled discretion of the industry" that existed before passage of the CWA. *VEPCO*, 566 F.2d at 450.

Industry petitioners seek to distinguish *NRDC* and *VEPCO*. The regulations in *NRDC*, they argue, "directly modif[ied]" effluent limitations, whereas "[t]he NPDES program regulations are much broader in scope . . . and do not modify any of the EPA's complex technological judgments related to . . . particular effluent limitations developed under section 301." Industry Brief at 31. And in both *NRDC* and *VEPCO*, they assert, the regulations were based on precise, technical information and applied only to particular types of point sources. The CPR's, everyone agrees, are far more general and rest dominantly on policy choices.

We do not agree with industry petitioners that these distinctions support initial review of the CPR's in district court rather than here. If anything, the case for first-instance judicial review in a court of appeals is

stronger for broad, policy-oriented rules than for specific, technology-based rules.[15] A fair reading of the *NRDC*

[15] National uniformity, an important goal in dealing with broad regulations, is best served by initial review in a court of appeals. *See* VEPCO v. Costle, 566 F.2d 446, 451 (4th Cir. 1977). All petitions may be consolidated in one court, as these actions have been, under 28 U.S.C. § 2112(a) (1976). *See generally* NRDC v. EPA, No. 80-1607 (D.C. Cir. Nov. 4, 1980) (per curiam). There is no analogous transfer provision for district courts. If we were to grant the motion to dismiss, there would be a real possibility, *see supra* note 4, that several different district courts would proceed to review the NPDES-related CPR's, with the attendant risk of inconsistent decisions initially and on appeal. *But cf.* Celanese Corp. v. Federal Energy Admin., 410 F.Supp. 571, 576 (D.D.C. 1976) (transferring case under 28 U.S.C. § 1404(a) (1976) by analogy to § 2112(a)).

Furthermore, the great advantage the district courts have over the courts of appeals—their ability to use extensive factfinding mechanisms—is not relevant here. There is not even an arguable need to engage in technical factfinding when judicial review is concentrated on an agency record and policy determinations. The argument that the district courts are more competent than courts of appeals to review the CPR's proves too much; as counsel conceded at oral argument, the policies alleged to support district court review are no stronger with respect to the CPR's than they are with respect to other actions immediately reviewable in the courts of appeals under environmental statutes, including the CWA itself.

Finally, industry petitioners assert a basis in the statutory language for their argument that only technical regulations are reviewable directly in courts of appeals. Section 509(b)(1)(E) designates for review only the promulgation of a limitation *under § 301, 302, or 306* of the CWA. The NPDES-related CPR's were not developed by parsing the technical criteria of these sections, but we do not believe this prevents them from having been developed "under" these sections within the meaning of the jurisdictional statute. Congress would have had no reason, as we noted above, to prefer that technical rules be reviewed here and policy-based rules in district court. EPA cited § 301 as a statutory basis for the CPR's, and the CPR's set out procedures for obtaining permits that comply with § 301. It is thus fair to say that the CPR's were promulgated under § 301.

and *VEPCO* opinions, moreover, shows that neither decision was in any way based on the technical character of the rules or the record. Indeed, our review on the merits in *NRDC* was largely an application of legal standards to EPA's policy judgments, not its technical determinations. *See NRDC v. EPA*, No. 79-1639, slip op. at 14-35 (D.C. Cir. May 7, 1981).

Our decision, like those of the *NRDC* and *VEPCO* courts, follows the lead of the Supreme Court in according section 509(b)(1) a practical rather than a cramped construction. *See generally Crown Simpson Pulp Co. v. Costle*, 445 U.S. 193 (1980) (per curiam). If we were to grant the motion to dismiss, one or more district courts might proceed to review the CPR's, yet review of a permit issued under the CPR's would take place directly in a court of appeals under section 509(b)(1)(F), 33 U.S.C. § 1369(b)(1)(F) (1976). This "would produce the truly perverse situation in which the court of appeals would review numerous individual actions issuing or denying permits . . . but would have no power of direct review of the basic regulations governing those individual actions." *E.I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112, 136 (1977). *Crown Simpson* and *du Pont* do not unequivocally dictate our result,[16] but their reasoning strongly supports a holding that we have jurisdiction.

III.

Industry petitioners argue that "due process" concerns nonetheless require a narrow interpretation of section 509(b)(1) review authority. Section 509(b)(1) contains a ninety-day "statute of limitations" for challenging any action of the Administrator that falls within its terms. Complementing this provision, section 509(b)(2), 33 U.S.C. § 1369(b)(2) (1976), provides that "[a]ction of the Administrator with respect to which review could

[16] *Crown Simpson* was an interpretation of § 509(b)(1)(F); *du Pont* involved numerical limitations.

have been obtained under [section 509(b)(1)] shall not be subject to judicial review in any civil and criminal proceeding for enforcement." Under these two provisions, one who wishes to challenge an action of the Administrator must, if the action is held to be within the categories of section 509(b)(1), do so within ninety days or lose forever the right to do so, even though that action might eventually result in the imposition of severe civil or criminal penalties.

Industry argues that this preclusive, "now or never" review aspect of the CWA mandates a narrow construction of section 509(b)(1): The more broadly the section is construed, the more likely it is that someone will have regulations enforced against him yet be precluded from challenging the validity of those regulations because of a failure to seek immediate review under section 509(b)(1). This argument finds substantial support in decisions of the Supreme Court and this court. In *Adamo Wrecking Co. v. United States*, 434 U.S. 275 (1978), the Court noted that the presence of an identical preclusive review provision in the Clean Air Act was a factor in determining that a particular regulation was not an "emission standard" that was therefore unchallengeable in an enforcement proceeding. And in *Chrysler Corp. v. EPA*, 600 F.2d 904 (D.C. Cir. 1979), this court construed a jurisdictional provision of the Noise Control Act to exclude certain actions of the Administrator, in part because of an identical preclusive review statute. Citing *Adamo*, the court declared that "[t]he nagging presence of a substantial due process question indicates, then, at the very least, the propriety of a narrow interpretation of" the jurisdictional statute. *Id.* at 913.[17]

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[17] In *Adamo*, the Court did not suggest that constitutional concerns underlay its decision to construe "emission standard" narrowly. Justice Powell, however, "join[ed] the Court's opinion with the understanding that it implies no view as to the constitutional validity of the preclusion provision of

This review-preclusion consideration lacks in the present case the force it had in *Adamo* and *Chrysler*. There is a critical difference between the statutory and regulatory schemes involved in those cases and the one here. The CPR's are not self-executing. As noted above, the CWA operates by prohibiting all pollutant discharges except those *allowed by a permit*. Each individual subject to the CPR's will of necessity have participated in a permit proceeding before being punished for violating the conditions specified in his permit. A polluter charged with violating those conditions will certainly be on notice of the duty he is alleged to have breached. As EPA puts it, "The possibility of an EPA 'sneak attack,' resulting in criminal sanctions with no notice to the victim other than the filing of a complaint, appears to have been controlling in *Adamo*. That factor is absent here." EPA Reply Brief at 16-17. *See generally Adamo*, 434 U.S. at 283 & n.2.

Industry counsel pointed out at oral argument, however, that another class of persons might be subject to sanctions as a result of the CPR's: those who were not previously required to obtain a permit but, because of some changed definitions in the CPR's, are now considered polluters subject to the CWA. For example, a member of this class might pollute an impounded stream without a permit believing that he was not polluting "waters of the United States." He might be unaware that one of

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§ 307 (b) [of the Clean Air Act, 42 U.S.C. § 7607(b) (Supp. III 1979)] in the context of a criminal prosecution." 434 U.S. at 291 (concurring opinion). This court, in *Chrysler*, based its narrow statutory interpretation both on "policy considerations," 600 F.2d at 912, arising from the preclusive provision, and on doubts as to "the constitutional validity of the preclusive review provision," *id.* at 913. In Harrison v. PPG Indus., 446 U.S. 578 (1980), Justice Powell noted the *Chrysler* decision and declared that "constitutional difficulties may well counsel a narrow construction of § 307 (b) (1)," the Clean Air Act jurisdictional section analogous to CWA § 509(b) (1). 446 U.S. at 594 (concurring opinion).

the CPR's, 40 C.F.R. § 122.3 (1981), for the first time defines "waters of the United States" to include such streams. Thus he could be prosecuted although at the time of his conduct he did not know he was violating the law.

We do not believe our interpretation of the jurisdictional provisions of the CWA should turn on the situation of a class such as this. There are certainly few persons in this position, and perhaps there are none. Furthermore, it is hardly clear that such polluters would be without recourse. If they were genuinely caught by surprise when prosecuted for pollution without a permit, they might raise the question whether the preclusive review provision, section 509(b)(2), was unconstitutional as applied to their special situation.[18] In a Clean Air Act case, the Supreme Court was urged to put a narrow construction on section 307(b)(1), 42 U.S.C. § 7607(b)(1) (Supp. III 1979), which governed court of appeals jurisdiction. It was urged that a broad construction would be unconstitutional because subsequent review of anything within section 307(b)(1) was barred by section 307(b)(2), 42 U.S.C. § 7607(b)(2) (Supp. III 1979). The Court rejected this argument: "The short answer . . . is that the validity of § 307 (b)(2) is not at issue here. The constitutional question raised by the respondents must, therefore, await another day." *Harrison v. PPG Industries*, 446 U.S. 578, 592-93 n.9 (1980). Identical reasoning applies in this case.[19]

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[18] Similarly, one who was unaware of the CPR's before seeking a permit, and who wished to attack them at the permit stage, might argue the unconstitutionality of § 509(b)(2) as applied.

[19] We also note that the Supreme Court has twice interpreted § 509(b)(1), and on neither occasion has the Court suggested that due process concerns required a narrow construction. *See* Crown Simpson Pulp Co. v. Costle, 445 U.S. 193 (1980) (per curiam); E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112 (1977).

IV.

We hold that the CPR's are an "effluent limitation or other limitation" under section 509(b)(1)(E). We reject industry petitioners' claim that "due process" requires a narrower construction; the statutory and regulatory framework of this case undercuts industry's arguments, and a constitutional attack on section 509(b)(2) must await a later day. We have authority to review any CPR's that are ripe for review. The motion to dismiss is denied.

So ordered.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT
September Term 1981

No. 80-1607

NATURAL RESOURCES DEFENSE COUNCIL, INC.,
Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and M. GORSUCH,
Administrator, U.S. Environmental Protection Agency,
Respondents.

CHEMICAL MANUFACTURERS ASSOCIATION, *et al.*,
Intervenors.

And Consolidated Case Nos. 80-1660, *et al.*

ARGUED 12-15-82

BEFORE: Bazelon, Senior Circuit Judge; Mikva And Ginsburg, Circuit Judges

ORDER

This matter is before the Court for consideration of the motion to dismiss filed by Industry Petitioners. On consideration thereof, it is

ORDERED by the Court that the motion to dismiss is denied for the reasons set forth in the opinion of the Court issued this date.

Per Curiam

United States Court of Appeals
for the District of Columbia Circuit

FILED March 2, 1982

GEORGE A. FISHER
CLERK

FOR THE COURT:

George A. Fisher,
Clerk

/s/ ROBERT A. BONNER
Robert A. Bonner
Chief Deputy Clerk

List Of Corporate Petitioners' Parents, Subsidiaries, And Affiliates Pursuant To Supreme Court Rule 28.1

This list is submitted pursuant to Rule 28.1 of the Supreme Court Rules.

Corporate Petitioners in *Chemical Manufacturers Association, et al.* v. *EPA*, D.C. Cir. Nos. 81-1570 and 81-1578

AMERICAN CYANAMID COMPANY

Subsidiaries and Affiliates

Arizona Chemical Company
B. Braun-Dexon G.m.b.H.
Brewster Phosphates
Cyanamid Iberica, S.A.
Cyanamid Italia S.p.A.
Cyanamid-Ketjen Katalysator B.V.
CY/RO Industries
Cyanamid (Portugal) Limitada
Cyanamid Taiwan Corporation
Cyanamire S.p.A.
Cyanenka S.A.
Laminate Industries (Pty) Limited
Societe Ananyme Formica
Formica Espanolo S.A.
Lederle (Japan) Ltd.
Mitsui-Cyanamid, Ltd.
Sherkat Sahami Cyanamid-KBC
Societe des Sutures Chirurgicales Robert & Carriere-Lederle
TDF Tiofine B.V.
The Catalyst Company

BORDEN INC.

Subsidiaries and Affiliates

Modelos Uki
Bayamon Can Corp., Inc.
Borden Chemical Co. France S.A.

P. Barnier S.A.
Feslente Boniface SA
Borden U.K. Ltd
Borden Espana, S.A.
Borden Int. Pkg. Ltd.
Crecspan S.A.
Demer S.A.
Este, S.A.
Gallina Blanca, S.A.
Naturin, S.A.
Promocion deMarcados
Rifacli, S.A.
Klemme GmbH & Co. KG
Borden Int'l. Philippines, Inc.
Feslente Boniface SA
Broex, S.A.
Productors Donita, Inc.
Clover Brand Dairies
Coco Lopez Mfg. Corp.
Alba Nordeste SA Industries Quimicas
Alimentos, S.A.
Borden Chem (M) SNDBHD
Compania Casco S.A.I.C.
Cia Chiricana deLeche
Cia Colombiana de Alimentos Lactos SA
Cia Industrial de Alimentos SA
LasAmigas del Pueblo
Materiales Moldeables S.A. de C.V.
Nassau Dairy Prod. Ltd.
Grand Bahama Dairy Products, Ltd.
Prolesa S.A. de C.V.
Derivados Industriales Veracruzanos SA
Lechas Pasteurizados de Libras S.A.
Productos deLeche SA
Proteinas Lacteas y Alimentos S.A.
Italcolor S.A.
Compania Casco S.A.I.C.
Compania Quimica Borden

Clemco, Inc.
Galloway-West Company, Inc.
Hitachi Borden Chem. Prod.
Illinois Nitrogen Corporation
Industrias LaFamosa, Inc.
Indulfor S.A.
Produits Lambiotte Freres S.A.
Borden Chem (France)
Societe d'Application de Flockage
TRL
John Robt. Powers Attractions, Inc.
Kansas Crop Service, Inc.
Kerry Cheese Tek Ltd.
Korea Borden Chusik Holsa
Latin America Agri-business Development Corp.
Indulfor S.A.
Mieji Borden, Inc.
Monochem, Inc.
Nassau Dairy Products
Ecuatoriana S.A.
Quimica Borden SA de CV
Shahdnab Company
Sun-Vue Fertilizers, Inc.
Trinidad Processing Company, Ltd.
The Viking Engraving Corporation

E.I. DU PONT DE NEMOURS & CO.

Subsidiaries and Affiliates[1]

Airport Limited Partnership
Allied Eneabba Ltd.
Concord Limited Partnership
Desarrollo Quimico Industrial, S.A.

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[1] In 1981, E.I. du Pont de Nemours & Company acquired Conoco Inc. The subsidiaries and affiliates of Conoco are listed at Appx A-30-32.

Ducilo S.A.
Du Pont Canada Inc.
Augusta Natural Gas Ltd.
Cedarcrest Company Limited
Du Pont Chemicals & Textiles (B.C.) Limited
Du Pont Chemicals & Textiles (Eastern) Limited
Du Pont de Quebec Limitee
Du Pont of Canada Exploration Limited
Ducanex Resources Limited
Twin Peak Resources
Petrosar Limited
Groupement D'Interet Economique Du Pont de Nemours (France) S.A. et Rhone-Poulenc Industries
Mitsui Fluorochemicals Company, Ltd.
Mitsui Polychemicals Company, Ltd.
Bontec Company, Ltd.
EDOBI
Hiroshima Sekisui
Hi-Sheet Industries, Ltd.
Kyokuto Kobunshi Company, Ltd.
Kyushu Taiyo Kasei Company, Ltd.
KZM Company, Ltd.
Muromachi Company, Ltd.
Taiyo Kasei Company, Ltd.
PD Magnetics B.V.
Showa Neoprene K.K.
Societe En Nom Collectif Du Pont de Nemours (France) S.A. et Rhone-Poulenc Industries
Syngas Company
Toyo Products Company, Ltd.
Adela Investment Company, S.A.
Conoco-Du Pont Exploration
Conoco-Du Pont Exploration II
Derivados Macroquimicos, S.A.
Derivados Sinteticos, S.A. de C.V.
Gemeinnutzige Wohnungsbau GmbH
Geomina, S.A.
Halocarburos, S.A. de C.V.

La Dominicia, S.A. de C.V.
Nylon de Mexico, S.A.
Inser, S.A.
Univex, S.A.
Pigmentos y Productos Quimicos, S.A. de C.V.
Inversiones y Terrenos del Golfo, S.A.
Quimica Fluor, S.A. de C.V.
Salgema Industrias Quimicas S.A.
Tetraetilo de Mexico, S.A.

FMC CORPORATION

Subsidiaries and Affiliates

Avicon, Inc.
British Cardboard Box Mashine Co., Ltd.
Chlor-Chem, Ltd.
FMC Europe, S.A.
FMC de Mexico, S.A.
FMC Saudi Arabia Limited
Foret, S.A.
Foret Arif Libanaise, S.A.R.L.
Peroxidos Organicos, S.A.
Sibelco Espanola, S.A.

KAISER ALUMINUM & CHEMICAL CORPORATION

Subsidiaries and Affiliates

Alpart Farms (Jamaica), Ltd.
Alumina Partners of Jamaica
Aluminium Bahrain
Aluminium Products Company Limited
Boyne Smelters Limited
Comalco Limited
Gerro Kaiser Dosenwerk GmbH
Grundstucksverwaltungsgesellschaft objekt Wallersheim
Hindustan Aluminium Company Limited

Hopewell International Company Limited
Jamaica Alumina Security Company, Ltd.
Kaiser Alluminio Italia S.R.L.
Kaiser Aluminium Huttenwerk GmbH
Kaiser Aluminium Kabelwerk GmbH
Kaiser Jamaica Bauxite Company
Kaiser TelePrompter of Hawaii, Inc.
Queensland Alumina Holdings N.V.
Queensland Alumina Limited
Queensland Alumina Security Corporation
Thai Metal Products Limited
Volta Aluminium Company Limited

MONSANTO COMPANY

Subsidiaries and Affiliates

Monsanto Company owns 66.5 percent of the voting power of Fisher Controls International, Inc. All other subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.[1]

NORTHERN PETROCHEMICAL COMPANY

Parent

Internorth Company

PPG INDUSTRIES, INC.

Subsidiaries and Affiliates

Duplate Canada Inc.
102957 Canada Limited

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[1] As reported in Monsanto Company's FORM 10-K to the Securities & Exchange Commission for the fiscal year ended December 31, 1981.

Duplate Investments Limited
Fiberglas Canada Inc.
Smith & Stone Inc.
Italver-Pittsburgh Paints S.p.A.
S.A. Peintures Corona/France
Corona Pittsburgh Paints S.A.
Norcolor S.A.
Corona Farben Vertreib GmbH
Pinturas Pittsburgh de Mexico S.A.
Societe Allyner S.A.
Vernante Pennitalia S.p.A
Pennitalia Securglass S.p.A.
Boussois S.A.
Compania Iberica de Productors Industriales, SA
Arkansas Chemiccals, Inc.
Asahi-Penn Chemical Company, Ltd.
Asahi PPG, Ltd.
Pittsburgh Corning Corporation
Nippon Pittsburgh Corning, K.K.
Pittsburgh Corning International Corp.
Deutsche Pittsburgh Corning GmbH
Pittsburgh Corning France S.A.R.L.
Pittsburgh Corning Nederland B.V.
Pittsburgh Corning (United Kingdom) Limited
Pittsburgh Corning Gesellschaft G.m.b.H.
Pittsburgh Corning (Schweiz) AG
Puerto Rico Olefins, Inc.
Pinturas Pittsburgh Iberica, S.A.
Pittsburgh Corning Europe N.V.
Inveca-Pittsburgh C.A.
Vidrio C.A.
Silenka B.V.
Tatung Coatings Co.
Antimony Products (Proprietary) Limited
Woodward Iodine
Puerto Rico Olefins II
Glass Plaza Associates
P.D. Glycol

ROHM AND HAAS COMPANY

Subsidiaries and Affiliates

Indofil Chemicals, Limited
Rohm and Haas Mexico S.A. de C.V.
Curachem
Modipon Limited
Japan Acrylic Chemical Co., Ltd.
The Shipley Company
Tokyo Organic Chemical Industries Limited
Quimica Trepic, S.A.
Yugocryl

STAUFFER CHEMICAL COMPANY

Subsidiaries and Affiliates

Cornwall Chemicals, Limited
Derivados Macroquimicos, S.A.
Electroquimica Potosi, S.A.
Fluorex, S.A.
Halocarburos, S.A.
Industrias Quimicas de Mexico, S.A.
Industrias Quimicas Serpiol, S.A.
Kali-Chemie Stauffer G.m.b.H.
Kashima Industries Company
Limanol, S.A.
Montrose Chemical Corporation of California
Mount Pleasant Chemical Company
Pacific Chemical Industries Pty., Ltd.
Promotora, I.Q.S.A.
Quimica Lucava, S.A.
SWS Silicones Corporation
Stauffer Australia Limited
Stauffer Chemical Company (New Zealand), Limited
Stauffer Chemical Company of Wyoming
Stauffer Rioplatense S.A.I.C.
Texas Alkyls Belgium, S.A.

Texas Alkyls, Inc.
Toyo-Stauffer Chemical Co., Ltd.

THE B.F. GOODRICH COMPANY

Subsidiaries and Affiliates

B.F. Goodrich Chemical de Venezuela C.A.
B.F. Goodrich Australia Ltd.
E.P.P.C. Polyplastic S.A.
Industria Colombiana de Llantas, S.A.
Japan Power Brake, Inc.
Policyd, S.A.
Compania Hulera Euzkadi, S.A.
Lima Caucho Co., S.A.
Philippine Vinyl Consortium, Inc.
Mobex Corp.
Fosroc/Tremco
Verfygungsmitten Handelsgesellachaft MBH
LIM-Holding S.A.

THE GOODYEAR TIRE & RUBBER COMPANY

Subsidiaries and Affiliates

Goodyear Canada Inc.
Goodyear India Limited
Goodyear Jamaica Limited
Goodyear Lastikleri Turk Anonim Sirketi
Goodyear Malaysia Berhad
Goodyear Maroc, S.A.
Goodyear Taiwan Limited
Goodyear (Thailand) Limited
P.T. Goodyear Indonesia
The Goodyear Tire & Rubber Company of the Philippines, Ltd.
GranIndustria de Neumaticos Centroamericana, S.A.
Toyobo Petcord Co. Limited
Goodyear Bendel Rubber Processing Co.

UNION CARBIDE CORPORATION

Subsidiaries and Affiliates

ACM Services
P.T. Agrocarb Indonesia
Argon, S.A.
Arizona Welding Equipment Co.
Bayox Inc.
Biosystemes S.A.
Calida Gas B.V.
Carbide Hashim Industrial Gas Co. Ltd.
Chemos Industries Pty. Ltd.
Chrome Corporation (South Africa) (Pty) Ltd.
Cia National de Calcareos e Derivados
Dai Nippon Jushi Co. Ltd.
Delvan Pty. Ltd.
Electrona Carbide Industries Pty. Ltd.
Elektrode Maatskapy Van Suid Africa (Eiendoms) Beperk
Eletro Manganes Ltda.
Eletrometalurgica Suadade Ltda.
General Welding Products, Inc.
Indugas N.V.
Joint Industries (Hycel) 1970 Ltd
Karaj Road Property Co. Ltd.
P.T. Karmi Arafura Fisheries
La Littorale S.A.
Miami Welding Supply, Inc.
Nippon Unicar Co.
Oriental Union Chemical Corp.
Oxigenio Edy S.A.
Oxigeno Del Norte, S.A.
Oy Unifos A.B.
Rodval S.A.
Societe Gabonaise Des Ferro-Alliages
Societe Miniere de Tambao S.A.
Sony-Eveready Inc.
Svenska Vicora Aktiebolaget
Tennigasco Gas Gathering Co.

Tubatse Ferrochrome (Pty.) Ltd.
Tungsmina Desenvolvimento de Industrias Minerais Ltda.
Tungstenio do Brasil Minerios e Metais Ltda.
Ucar Plastics Ghana Ltd.
Unifos Kemi A.B.
Union Carbide Argentina S.A.I.C.S.
Union Carbide Australia & New Zealand Ltd.
Union Carbide Austrailia Ltd.
Union Carbide Canada Ltd.
Union Carbide Ceylon Ltd.
Union Carbide Egypt S.A.E.
Union Carbide France, S.A.
Union Carbide Ghana Ltd.
Union Carbide Kenya Ltd.
Union Carbide Malaysia Sdn. Bhd.
Union Carbide Mexican, S.A.
Union Carbide New Zealand Ltd.
Union Carbide Nigeria Ltd.
Union Carbide Pakistan Ltd.
Union Carbide Sudan Ltd.
Union Carbide Yemen Ltd.
Union Gas Co. Ltd.
Union Industrial Gas Corp.
Union Polymers Sdn. Bhd.
Union Showa K.K.
Viscora (Deutschland) G.m.b.H.
Viscora Italiana
Viscora, S.A.
Viskase Ltd.
Visking do Brasil S.A.
Sociedad Anomima White Martins
S.A. White Martins Nordeste
Wimpey Unox Ltd.

Corporate Petitioners in *American Iron & Steel Institute, et al.* v. *EPA*, D.C. Cir. Nos. 81-1576 and 81-1746[1]

ARMCO INC.

Subsidiaries and Affiliates

Oregon Metallurgical Corporation

JONES & LAUGHLIN STEEL CORPORATION, a division of JONES & LAUGHLIN STEEL INCORPORATED

Parent

The LTV Corporation

Corporate Petitioners in *American Petroluem Institute, et al.* v. *EPA*, D.C. Cir. Nos. 81-1577 and 81-1709[1]

ATLANTIC RICHFIELD COMPANY

Subsidiaries and Affiliates

Hardy Oil Company
Sinclair Venezuelan Oil Company
Anaconda Iron Ore (Ontario) Limited
Bingham Development Company
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Chile Copper Company

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[1] The above list includes only publicly-held domestic subsidiaries and affiliates. Some of the nine corporate petitioners in American Iron & Steel Institute v. EPA may have non-publicly-held or foreign affiliates and subsidiaries. A list of these companies is available upon request.

[1] The listing includes petitioners' parent companies and publicly-traded subsidiaries and affiliates.

Defender Mining and Milling Corporation
Dragon Consolidated Mining Company
Green Cananea Copper Company
Mayflower Mining Company
Middle Swansea Mining Company
New Bingham Mary Mining Company
North Lily Mining Company
Park Cummings Mining Company
Park Premier Mining Company
Patten Mining Company
Smoke House Copper Mining Company
West Mayflower Mining Company
Badger Pipe Line Company
Blair Athol Coal Pty. Ltd.
Compania de Petroleo Ganso Azul, Ltda.
Compania Mexicana de Petroleo "El Charro", S.A.
Flower Street Ltd.
Gravity Adjustment Inc.
Hydrokem Performance Chemicals Company
Iricon Agency Ltd.
Kenai Pipe Line Company
R.W. Miller (Holdings) Limited
Montoro, Empresa Para La Industria Quimica, S.A.
The Observer Magazine Limited
Platte Pipe Line Company
Sao Raimundo Agroindustrial Ltda.
Sinclair Venezuela Oil Company
Tecumseh Pipe Line Company
Texas, New Mexico Pipe Line Company
Alyeska Pipeline Service Company
Colonial Pipeline Company
Cook Inlet Pipeline Company
Delaware Bay Transportation Company
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Lavan Petroleum Company
Oil Shippers Service, Inc.
Trans Mountain Oil Pipe Line Company

CHEVRON U.S.A., INC.

Parent

Standard Oil Company of California

Subsidiaries and Affiliates

AMAX Inc.
Cetus Corporation
Huntington Beach Company
Kentucky Agricultural Energy Corporation
Long Beach Oil Development Company
Rimbeg Pipe Line Co., Ltd.
Wind Farms Ltd.

CONOCO INC.

Parent

E.I. du Pont de Nemours & Company

Subsidiaries and Affiliates

A/S Soties Plass 2
Associated Petroleum Terminals Ltd.
Benzene Marketing Co. Ltd.
Big Sky of Montana Realty, Inc.
Bishop Coal Company
Calcasieu Chemical Corporation
Carbon Black Espanola, S.A.
Cardinal River Coals, Ltd.
Cit-Con Oil Corporation
Cliffe Storage Ltd.
Colonial Pipeline
Compagnie Francaise du Carbon Black, S.A.
Conch International Methane, Ltd.
Conch L.N.G.
Condea Chemie, GmbH
Conoco Exploration, Ltd.
Conrhein Coal Co.
Continental Columbia Carbon Nederland, B.V.

Contochu, Inc.
Crude Oil Terminals (Humber) Ltd.
Dixie Pipeline
Explorer Pipeline Company
Felix Oil Company
Harmar Coal Company
Humber Oil Terminals Trustee Ltd.
Iranian Investment Corp.
Iranian Oil Participants Ltd.
Iranian Oil Services (Holdings) Ltd.
Iricon Agency, Ltd.
Itmann Coal Company
K/s Statfjord Transport A.S. & Co.
Kettleman North Dome Association
Lake Charles Pipe Line
Long Beach Oil Development Company
Lucky Continental Carbon Co., Ltd.
Maritime Protection (PTE) Ltd.
Maritime Protection A/S
Maritime Protection Inc.
Mathies Coal Company
Neptune Bulk Terminals (Canada) Limited
Nippon Aluminum Alkyls, Ltd.
Nissan Conoco Corporation (CONSAN)
Oasis Oil Co. of Libya, Inc.
Oil Shippers Service, Inc.
OMW (Oberrheinische Mineraloelwerke GmbH)
Pasa Petroquimica Argentina, S.A.
Petrocokes, Ltd.
Petroleum Storage Ltd.
Petroleum Terminals, Inc.
Petroquimica Espanola, S.A. (PETRESA)
Pioneer Pipe Line Company
Platte Pipe Line
Seadock, Inc.
Seaway Pipeline, Inc.
Selang Ltd.
Southern Facilities, Inc.

Statfjord Transport A.S.
Stavangereske Westamarine A/S
Sulitjelma Elektronikk A/S
T.A.L.
T.A.L. (Austria)
T.A.L. (Italy)
T.A.L. (Luxembourg)
Texas Offshore Port, Inc.
The Standard Shale Products Company
Tidelands Royalty Trust
Tongue River Holdings, Inc.
Tongue River Railroad
Toyo Continental Carbon, Ltd.
Union National Bank Building
Warwickshire Oil Storage Ltd.
West Shore Pipe Line
Westmarin A/S
Yellowstone Pipe Line

EXXON CORPORATION
(identified in the court below as Exxon Company, U.S.A., a division of Exxon Corporation

Subsidiaries and Affiliates

Imperial Oil Limited
Reliance Electric Company
Exxon Pipeline Company

GETTY OIL CORPORATION

Subsidiaries and Affiliates

Chemplix Company
Chemplix Construction Corp.
Chase Terminal Company
Chase Transportation Company
Entertainment and Sports Programming Network, Inc.

Northern Tier Pipeline Company
Osage Pipe Line Company
Texoma Pipe Line Company
Vancouver Plywood Co., Inc.
Crescent Petroleum Company
Mitsubishi Oil Company, Limited
Iricon Agency Ltd.
Texas-New Mexico Pipeline Company
Tide Water Oil Company (India) Limited
Yong-Nam Chemical Company, Ltd.
Dieter Pohlmann & Co.
Butte Pipeline Company
Canadian Reserve Oil and Gas Ltd.
Gibson Holdings, Ltd.
Gibson Petroleum Ltd.
Halbouty Alaska Oil Company
Wascana Pipe Line Inc.
Wascana Pipe Line Ltd.
Chisholm Pipeline Company

GULF OIL CORPORATION

Subsidiaries and Affiliates

Gulf Canada Limited
China Gulf Plastics Corporation
Asia Polymer Corporation
Chinhac Chemical Company, Ltd.
Plastgama S.A.
Taiwan VCM Industries Corporation
Bioresearch Center Company, Ltd.
Laurel Pipe Line Company
Platte Pipe Line Company
Venezuela Gulf Refining Company
West Texas Gulf Pipe Line Company
A/S Jargul
A/S Jargul and Co. K/S
AB Djurgardsberg

Adela Investment Company, S.A.
Albert Rose Chemicals, Ltd.
Allied-General Nuclear Services (partnership)
Andogas S.A.
Autobahn-Raststaette Wurenlos Ag.
China Gulf Oil Company Limited
Colonial Pipeline Company
Compagnie D'Investissement Bustinbles De Reacteurs A Haute Tp.
"Condor" Industria Quimica, S.A.
Delaware Bay Transportation Company
Det Gronlandske Olieakieselskab
Dixie Pipeline Company
Eastern Venezuelan Gas Transport Company
Ethyleen Pijpleiding Maatschappij (Belgium) S.A.
Ethyleen Pijpleiding Maatschappij (Nederland) B.V.
Explorer Pipeline Company
General Atomic Company (partnership)
Gulf Canada Resources Inc.
Gulf Oil Zaire S.A.R.L.
Harshaw-Murata Kabushika Kaisha
Harshaw Galvanotecnia S.A.
Harshaw-Juarez S.A. de C.V.
Harshaw Quimica Ltda.
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Kuwait Oil Company Listed
London Oil Refining Company Limited
Mainline Pipelines Limited
Midwest Carbide Corporation
Oklahoma Nitrogen Company (partnership)
Pembroke Cracking Company
Petrosil Oil Company Limited
Pol Transport AB
Polyquimicos, S.A.
Raffinerie de Cressier S.A.
Resinas Andinas S.A.
Rio Blanco Oil Shale (partnership)

SARNO S.p.A.
Societe de Combustible Pour Reacteurs A Haute Temperature (Corhat)
Solvent Refined Coal International, Inc.
Sunrise International Company Limited
Svensk Petroleum Administration A.B.
Svensk Petroleum Largring Tre A.B.
Svensk Petroleum Forvalting A.B.
Taita Chemical Company, Ltd.
Taiwan Plasticizer Corporation
Britama Tankers Limited

MARATHON OIL COMPANY

Parent
United States Steel Corporation

Subsidiaries and Affiliates

Petroleum Terminals, Incorporated
The Airport Company of Hilton Head Island, Inc.
Arctic LNG Transportation Co.
Automotive Fuel Corporation
Automotive Fuel Corporation of Delaware, Inc.
Badger Pipe Line Company
Cheker-Imperial Oil Co. of Alabama
Cheker-Imperial Oil Co. of Arkansas
Cheker-Imperial Oil Co. of Georgia
Cheker-Imperial Oil Co. of Iowa
Cheker-Imperial Oil Co. of Kansas
Cheker-Imperial Oil Co. of Mississippi
Cheker-Imperial Oil Co. of Missouri
Cheker-Imperial Oil Co. of Nebraska
Cheker-Imperial Oil Co. of Tennessee
Cheker Oil Company
Cheker Oil Company of Delaware, Inc.
Cheker Oil Company of Florida, Inc.
Cheker Oil Company of Indiana, Inc.
Cheker Oil company of Michigan, Inc.

Cheker Oil Company of Ohio, Inc.
Cheker Oil Company of Wisconsin, Inc.
City Point Oil Terminal, Inc.
Cook Inlet Pipe Line Co.
Dor Rae Realty, Ltd.
Ecol, Inc. (Mississippi)
Explorer Pipeline Company
Globe Oil Company, U.S.A.
Gravcap, Inc.
Green Bay Terminal Corp.
Hilton Head Island Realty, Inc.
Hilton Head Management Co., Inc.
Kenai LNG Corp.
Key Pipe Line Co. Ltd.
Kroll Glass Service, Inc.
Locap, Inc.
Loop Inc.
Marco South, Inc.
Oil Insurance Limited
Oil Shippers Service, Inc.
Oklahoma Oil Co.
Pilot Oil Corporation
Platte Pipe Line Co.
Polar LNG Shipping Corporation
Port Oil Inc.
Qualbank, Inc.
Redwater Water Disposal Company Limited
Russell Stewart Oil Co.
Sandcastle Land Company, Inc.
Tideland Realty of Hilton Head, Inc.
U-Save, Inc.
Webster Service Stations, Inc.
West Shore Pipe Line Co.
Wolverine Pipe Line Co.
CLAM Pet. Company
Compania Iberica Refinadora de Petroleos, S.A.
Deutsche Transalpine Olleitung GmbH
Oasis Oil Company of Libya, Inc.

Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Transalpine Finance Holdings S.A.
Transalpine Olleitung in Osterreich GmbH
Cope Petrolera S.A.
Domex Packaging Ltd.
P.V. Commodity Systems Ltd.
Magnorth Pet. Ltd.
Panwest Pty. Limited
Sage Creek Coal Limited
Valley Beach, Inc.

MOBIL OIL CORPORATION[1]

Subsidiaries and Affiliates

AB Djurgardsberg
Abu Dhabi Petroleum Company Limited
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama A.S.
Altona Petrochemical Company Limited

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[1] Mobil Oil Corporation is a wholly owned subsidiary of Mobil Corporation which is publicly held. Listed above are the affiliates and subsidiaries of Mobil Corporation, Mobil Oil Corporation, and their affiliates and subsidiaries which are or may be publicly held. For purposes of this list only companies in which a five percent (5%) or greater interest is held are considered.

Alyeska Pipeline Service Company
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
A/S Kongens Plass I
A/S Moretral
Ammenn GmbH
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Sahara S.A.
Australasian Petroleum Company Proprietary Limited
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anomim Sirketi
B.V. Beheersmaatschappij MOBEM
Basrah Petroleum Company Limited
Bataan Refining Corporation
Bayerische Erdgasleitung GmbH
Bin Sulaiman Mobil Towers
Bayerische Mineral Industrie A.G.
Benoil S.A.
Bostadsrattsforeningen Basunen, Malmo
Bostadsrattsforeningen Forarsatet, Orby
Bostadsrattsforeningen Silverskatten, Trellebor
Bostadsrattsforeningen Skepparegarden, Norrkoping
Brazos Heights Housing Incorporated
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.

Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
Celmisia Shipping Corporation
Celulosa y Papel de Columbia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercera S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colonial Pipeline Company
Combustibles Colmerauer
Comet-Brennstoffdienst GmbH
Comex-Seal France S.A.
Comex-Seal Guernsey Ltd.
Comex-Seal Limited
Comex-Seal U.K. Limited
Comex-Seal U.S. Corporation
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Entreposage Communautaire
Compagnie Immobiliere (Comimmo)
Compagnie Regionale de Distribution de Produits Petroilers-C.O.R.E. Dis.
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania de Lubricants de Chile Limitada (Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales, S.A. de C.V.
Consortium Raymond Duez
Constructora Calle 70 S.A.
Cook Inlet Pipe Line Compa
CORCOP

Corrugadora de Carton, S.A.
C.R.C. Lyon Chauffage
CRCP
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
De. Ba. Deposito di Bari S.p.A.
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Mobil Oil Exploration Ireland Ltd.
Deutsche Pentosin-Werke GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Disie Pipeline Company
Drivmedelscentralen AB
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
Emoleum (Asphalts) Limited
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Entreprise Jean Lefebvre
Erdgas-Verkaufs-Gesellschaft mbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook
Erdoelraffinerie Gesellschaft mbH in Liquidation
Establissments Bouthenet
Establissments Nicol and Cie
Faavang Autoverksted A/S
FACEL
Fairwind Maritime Company, S.A.
Felix Oil Company

Filtroleo-Sociedade Portuguesa de Filtros Lda.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
Fountain Garage (East Park) Ltd.
Fountain Garage (Meadowhead) Ltd.
Fountain Garage (Mercury) Ltd.
Fountain Garage (Newbury Park) Ltd.
Fountain Garage (Stirchley) Ltd.
Frome-Broken Hill Company Proprietary Limited
Fruehmesser mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gaz Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Jugenholtz & Co. B.V.
Heizoel-Handelsgessellschaft mbH
Hellas Gas Storage Company S.A.
Highgate Associates, Ltd.
Home Counties Petroleum Products Limited
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imperial Gas Co. of P.R., Inc.
Industria de Carbon del Valle Cauca, S.A.
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited
Iraq Petroleum Transport Company Limited
Island Exploration Company Proprietary Limited

Istanbul Petrol ve Makine Yasglari Limited Sirketi
Japan Airport Fueling Service Co. Limited
Japan Solar Energy Co., Ltd.
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen
Kanto Kyguns Sekiyu Hambai K.K.
Kanto Oil Pipeline Co., Ltd.
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabushiki Kaisha
Kyokyto Petroleum Services Overseas, Ltd.
Kyokuto Sekiyu Services Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Les Nouveaux Comptoirs Petroliers
Les Supermarches De Cote D'Ivoire
Kikit Petrol Gazi ve Yakit Ticaret A.S.
Lubricants del Sur, S.A.
Marceaux & Cie
Matco Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterrenean Refining Company
Meentzen & Franke GmbH & Co.
Mobil Ami, S.A.
Mobil Atlas Sociedad Anonima de Capital Variable
Mobil Chemie Belgie N.V. and Mobil Chimie Belge S.A.
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG

Mobil Oil Angola, SARL
Mobil Oil Cameroun
Mobil Oil Cote d'Ivoire
Mobil Oil Dahomey
Mobil Oil Djibouti, S.A.
Mobil Oil Francaise
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Haute Volta
Mobil Oil Holdings, S.A.
Mobil Oil Mali
Mobil Oil Maroc
Mobil Oil Mauritanie
Mobil Oil Niger
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mobil Oil Philippines Inc.
Mobil Oil Portuguesa, S.A.R.L.
Mobil Oil Rwanda-Burundi (S.A.R.L.)
Mobil Oil Senegal
Mobil Oil Tchad
Mobil Oil Togo
Mobilrex
Mobil Tunisie
Mobil Tyco Solar Energy Corporation
Molinos de Carton y Papel, S.A.
Morem
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Ndola Oil Storage Company Limited
Near East Development Corporation
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nordic Storage Company Ltd.

Nottingham Gas Limited
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oil Kol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company
P.T. Arun Natural Gas Liquefaction Company
P.T. Stanvac Indonesia
Pars Investment Corporation
Pembalta Gas System No. 1. Ltd.
Pembalta Gas System No. 3. Ltd.
Pembalta Gas System No. 4. Ltd.
Pembalta Gas System No. 5. Ltd.
Pembalta Gas System No. 6. Ltd.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petromin Lubricating Oil Company
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe-Lines de la Pallice
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Company, Ltd.
Randhurst Corporation
Reforestadora Andina, S.A.

Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Rohel-Aufsuchungs Gesellschaft mbH
Ruhrgas Aktiengesellschaft
S&M Pipeline Limited
S.A. Mas & Cie
S.A.M. Lebreton
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Sanwa Kasei Kogyo Kabushiki Kaisha
SARL Garage Pineau
Sarni S.p.A.
Saudi Arabian Maritime Company
Saudi Can Company, Ltd., The
Saudi Chemicasl Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi, Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
S.C.I. Du Fonds Du Val
Seal Participants (Holdings) Limited
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
SENERCO
Seram Societa per Azioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
R. Simonnet & CIE
Sociedade Portugal Marrocos SARL
Societa Italiana per l'Oleodotto Transalpino, S.p.A.
Societe Africaine de Raffinage
Societe Agicole Des Entreprises Petrolieres (S.A.D.E.P.)
Societe Anonyme Etablissments Nicol and Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha

Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue du General Leclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction "La Residence Brune"
Societe Civile Immobiliere du 10 Bd. de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Civile Immobiliere Mobil
Societe Dahomeenne d'Entreposage de Produits Petroliers
Societe d'Arement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Manutention de Carburants Aviation Dakar-Yoff
Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Maperizlx d'Etancheite Pour Le Entreprises (Meple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage Petrolier au Burundi
Societe de Renovation D'Emballages Metalliques (REM)
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe des Establissments Goux
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie (Syrie) S.A.

Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)
Societe Ivoirienne de Raffinage
Societe Mauritanienne d'Entreposage de Produits Petroliers
Societe Nationale de Raffinage (Sonora)
Societe Nouvelle Raffinereie Meridionale De Ceresines (RMC)
Societe Novodis
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Regionale De Produits Petroliers
Societe Regionale de Produits Energetiques
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togolaise d'Entreposage (STE)
SOMODIP
Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
South West Africa Road Binders (Proprietary) Limited
Statfjord Transport A.S.
SStation-Service Lunes
Sydney Metropolitan Pipeline Pty. Ltd.
Syria Petroleum Company Limited
T.R. Miller Mill Company, Inc.
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH * Co.Energiebedarf K.G.
Texoma Pipe Line Company
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha

Tonen Technology Kabushiki Kaisha
Total Centrafricaine de Gestion (TOCAGES)
Toulouse-Distribution Produits Petroliers
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gessellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport Gesellschaft MbH
Turkish Petroleum Company Limited
Twifo Oil Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited
VOSACEC, S.P.A.
W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Werner Weidemann Mineraloelvertrieb G.m.b.H.
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres

PHILLIPS PETROLEUM COMPANY

Subsidiaries and Affiliates

Acurex Corporation
Aero Oil Company
Alyeska Enterprises, Inc.
Alyeska Pipeline Service Company
Arctic LNG Transportation Company
Bonny LNG Ltd. (P.P. Worldwide Gas Ltd.)
Bruin Carbon Dioxide Sales Corporation

Calatrava Empresa Para la Industria Petroquimica, S.A.
Canada Western Cordage Co., Ltd.
Canyon Reef Carriers Inc.
Cochin Refineries Ltd.
Colonial Pipeline Company
Compagnie Francaise du Carbon Black S.A.
Dixie Pipeline Company
Everglades Pipe Line Company
Explorer Pipeline Company
Gardner Cryogenics Europe N.V.
Insurance and Reinsurance Brokers (Bermuda) Ltd.
Iranian Marine International Oil Company
Kaw Pipe Line Company
Kanai LNG Corporation
LeeFac, Inc.
Negromex S.A.
Nordisk Philblack AB
Norland Gmbh
Norpipe A/S
Norpipe Petroleum U.K. Ltd.
Norsea Gas A/S
Norsea Gas GmbH
Norsea Pipeline Ltd.
Papago Chemicals, Inc.
Petrochim
Phillips Carbon Black Company (Pty.) Ltd.
Phillips Carbon Black Italiana S.p.A.
Phillips Carbon Black Limited
Phillips Gas Supply Corporation
Phillips Imperial Petroleum Limited
Phillips Pacific Chemical Company
Phillips Petroleum Singapore Chemicals (Private) Limited
Philmac Oils Limited
Plasticos Vanguardia S.A.
Polar LNG Shipping Corporation
Polyolefins
Powder River Corporation
Renolit Fertighaus GmbH

Seadock, Inc.
Seaway Pipeline, Inc.
Sevalco (Holdings) Limited
Societe De Developpement Des Polyolefins
Transatlantic Reinsurance
Trenwick Ltd.
Western Desert Operating Petroleum Company
White River Shale Oil Corporation

SHELL OIL COMPANY

Subsidiaries and Affiliates

Basin Pipe Line System
Bullenbay Marine Services, N.V.
Butte Pipe Line Company
Capline System
Capwood Pipe Line System
Crown-Shell Baytown Feeder Line System
Curacao Oil Terminal N.V.
Dixie Pipeline Company
East Texas Salt Water Disposal Company
Explorer Pipeline Company
Gravcap, Inc.
Inland Corporation
LOCAP, Inc.
LOOP, Inc.
Oil Companies Institute for Marine Pollution
Compensation Limited
Olympic Pipe Line Company
Ozark Pipe Line Company
Plantation Pipe Line Company
Rancho Pipe Line System
Royal Dutch Petroleum Company
Seadock, Inc.
Shell Petroleum, N.V.
The "Shell" Transport and Trading Company, Ltd.
Ship Shoal Pipe Line System

Thums Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company

STANDARD OIL COMPANY (INDIANA)

Subsidiaries and Affiliates

Analog Devices
Chicago Bank of Commerce
Cetus Corporation
Dearborn Park Corporation
Illinois Neighborhood Development Corporation
National Corporation for Housing Partnerships
Semix
Solarex Company

TEXACO INC.

Subsidiaries and Affiliates

Alberta Products Pipe Line Ltd.
Arabian American Oil Company
Associated Octel Company Limited, The
Aviation Fuel Services Ltd.
Boral Limited
New Zealand Refining Company Limited, The
South Africa Oil Refinery (Proprietary) Ltd.
Batangas Land Company Inc.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Ndola Oil Storage Company Limited
Central African Petroleum Refineries (Private) Ltd.
East African Oil Refineries Limited
H. C. Sleigh Limited
Pakistan Refinery Limited
Societe Malgache de Raffinage
Societe Reunionnaise d'Entroposage (S.R.E.)
Cia. Refinadora Petrolera Santo Domingo Inc.
Deutsche Transalpine Ollejtung GmbH

Forenade Syenska Oljeimportorers AB
Frevlig A.G.
Gas Natural Colombiana S.A.
Ghana Bunkering Services Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Irish Refining Company Limited
Maghreb Gaz S.A.
Mainline Pipelines Limited
Miland Ariport Refueling Services, S.p.A. (MARS)
Mitsui-Texaco Chemicals Co., Ltd.
Montreal Pipe Line Company Limited
N.V. Rotterdam Rijn Pijpleiding Maatschappij
Oberheinische Mineralolwerke G.m.b.H.
Pars Investment Corporation
Pipelines of Puerto Rico, Inc., The
Raffinerie du Sud-Quest S.A.
Refinery Services Company S.A.
Rheem del Eduador C.A.
Rhein-Mein Rohrleitungstransportgesellschaft m.b.H.
Saudi International Petroleum Carrier Ltd.
Sierra Leone Petroleum Refining Company Limited, The
Skandinaviska Raffinaderi Aktiebolaget Scanraff
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali (SARPOM)
Societe Africaine de Raffinage S.A. (SAR)
Societe Anonyme de la Raffinereie des Antilles (SARA)
Societe D'Entreposage de Bobo-Dioulasso
Societe Camerounaise d'Entreposage (SCE)
Societe Dakaroise d'Entreposage S.A. (SDE)
Societe d'Entreposage de San Pedro S.A. (SESP)
Societe d'Entreposage Petrolier au Burundi S.A.R.L. (SEP-BURUNDI)
Societe De ManutentionDes Carburants Aviation Dakar Yoff (SMACADY)
Societe Gabonaise de Raffinage (SOGARA)

Societe Gabonaise d'Entreposage du Produits Petroliers S.A. (STEPP)
Societe Togalaise d'Entreposage S.A. (STE)
Svensk Petroleum Forvaltning Aktiebolag
Tankanglage AG Ruemlang (TAR)
Texaco Mexicana, S.A.
Transalpine Finance Holdings S.A.
Transalpine Olleitung in Osterreich GmbH
Trinidad Asphalt Holdings Limited
Trinidad Northern Areas Limited
Trinmar Limited
Trintovac Developments Limited
Refineria Texaco de Honduras, S.A.
Texaco Agro-Industrial (Nigeria) Limited
Quimica Industrial "FIDES" S.A.
Texaco Canada Inc.
Public Fuel Transmission Systems Limited
Great Eastern Oil & Import Co. Limited, The
Texaco Norway A/S
Deutsche Texaco Aktiengesellschaft
Texaco Portugal Prospeccaoe Producao, S.A.R.L.
Texaco North Sea Norway A/S
Texaco Gabon
Texaco Togo
Zaire-Texaco S.A.R.L.
Texaco Nigeria Limited
Texaco-Cities Service Pipe Line Company
Tadlaqaz S.A.
American Overseas Petroleum Limited
Bunkerservice Brunsbuttel G.m.b.H.
Societe Ivoirienne De Futs et D'Emballages (SOGUILUBE) (See Texaco Africa Ltd.)
Caltex Petroleum Corporation
Australian Lubricating Oil Refinery Limited
Phoenicia Oil Company S.A.L.
Botany Bay Tanker Company (Australia) Pty. Limited
Sydney Metropolitan Pipeline Pty. Limited
Koa Oil Company, Limited

Mediterranean Refining Company
Nippon Petroleum Refining Company, Ltd.
Tokyo Tanker Company, Limited
Caltex Deutschland G.m.b.H.
Caltex Mediterranean Limited
Condea Chemie G.m.b.H.
Federated Pipe Lines Ltd.
Flexibox G.m.b.H.
LPG de Panama, S.A.
Pembroke Capital Company Inc.
P.T. Caltex Pacific Indonesia
Petrogas, S.A.
Texaco Maroc
Societe Ivoirienne D'Avitaillements Portuaires (S.I.A.P.)
Societe Ivoirienne D'Entrepasage De Produits Petroliers (S.I.E.P.P.)
Badger Pipe Line Company
Bayonne Industries, Inc.
Canyon Reef Carriers, Inc.
Colonial Pipeline Company
Coltexo Corporation
Dixie Pipeline Company
Explorer Pipeline Company
Felix Oil Company
Kaw Pipe Line Company
Laurel Pipe Line Company
LOCAP Inc.
LOOP Inc.
Olympic Pipe Line Company
Portland Pipe Line Corporation
Texas-New Mexico Pipe Line Company
THUMS Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
Aktiebolaget Svensk Petroleumlagring

United Kingdom Oil Pipelines Limited
Unterflur Betankungsanlage A.G. (UBAG)
West Australian Natural Gas Pty. Limited
Zaire Services des Entreprises Petrolieres (Zaire S.E.P.)
Aktiebolaget Djurgardsberg
Association Petroliere Belge
Aviation Fueling Services, S.A.
Aviation Service Center
Compagnie Entreposage Communautaire
Singapore Refining Company Private Limited
Societe Belge de Transport Par Pipeline S.A.
Societe de Cabotage Petrolier S.A.
Societe du Pipeline Sud-European S.A.
Societe Nationale de Raffinage
Svensk Petroleumadministration AB
Total Centrafricaine de Gestion
Societe Agricole des Enterprises Petrolieres
Union des Raffineurs Belges
Svensk Petroleumlargring Tre Aktienbolag
Societe Cameranaise des Depots Petroleirs (SCDP)
TNPL
AK Chemie GmbH & Co. KG
Bergemann KG
Braunkohle-Benzin AG
Knoops & Muller Mineralolhandel GmbH
Karlsruhe-Stuttgart Rohrleitung GmbH
Bremer Mineralolhandel GmbH
Dannenberg & Co. Mineralolhandel GmbH
Mdina Weave Ltd.
W. Knierim & Co. Mineralolhaldel GmbH
Boske & Co. Mineralolhandel GmbH
HoeTex Beteiligungsgellschaft mbH
Bayonne Industries, Inc.
Canyon Reef Carriers, Inc.
Colonial Pipeline Company
Coltexo Corporation
Dixie Pipeline Company
Explorer Pipeline Company

Felix Oil Company
Kaw Pipe Line Company
Laurel Pipe Line Company
LOCAP Inc.
LOOP Inc.
Olympic Pipe Line Company
Portland Pipe Line Corporation
Texas-New Mexico Pipe Line Company
THUMS Long Beach Company
West Shore Pipe Line Company
Wolverine Pipe Line Company
Wyco Pipe Line Company
Aircraft Fuel Supply B.V.
Airport Refueling Services S.p.A.
Aktiebolaget Svensk Petroleumlagring
United Kingdom Oil Pipelines Limited
Unterflur Betankungsanlage A.G. (UBAG)
West Australian Natural Gas Pty. Limited
Zaire Services des Entreprises Petrolieres (Zaire S.E.P.)
Aktiebolaget Djurgardsberg
Wichmann Beteiligungsgesellschaft mbH
Caluplast Farbenfabriken Wichmann
Zerssen Mineralolhandel GmbH & Co. GmbH

UNION OIL COMPANY OF CALIFORNIA

Subsidiaries and Affiliates

Ace Gas, Inc.
Brea Agricultural Service
Cymoly Corporation
Gravity Adjustment, Inc.
Kyung in Energy Company, Limited
Los Angeles Oil Company, Inc.
Miami Valley Corporation
Mid-County Chemical Co.
Midwest PMN, Inc.
Minera Unionoil Chile Limitada

Duachita Fertilizer Company, Inc.
P-M-S West, Inc.
Sanitation, Inc.
Sepulveda Oil and Gas Company
Southcap Pipe Line Company
Superior Deshler Co.
Union Oil Company of Canada, Ltd.
Unoco (Philippines), Inc.
Van Salt Water Disposal Company

Corporate Petitioners in *Virginia Electric and Power Company, et al.* v. *EPA*, D.C. Cir. Nos. 81-1569 and 81-1572

ALABAMA POWER COMPANY

Parent

The Southern Company

Subsidiaries and Affiliates

Alabama Property Company
Southern Electric Generating Co.

ALLEGHENY POWER SYSTEM, INC.

Subsidiaries and Affiliates

Allegheny Power Service Corp.
Monongahela Power Co.
The Potomac Edison Co.
Allegheny Pittsburgh Coal Co.
West Penn Power Co.
West Virginia Power & Transmission Co.
West Penn West Virginia Water Power Co.

AMERICAN ELECTRIC POWER COMPANY, INC.

Subsidiaries and Affiliates

American Electric Power Service Corp.
Appalachian Power Company

Cedar Coal Co.
Central Appalachian Coal Co.
Central Coal Co.
Central Operating Co.
Kanawha Valley Power Co.
Southern Appalachian Coal Co.
West Virginia Power Co.
Franklin Real Estate Co.
Indiana Franklin Realty, Inc.
Indiana & Michigan Electric Co.
Indiana & Michigan Power Co.
Castlegate Coal Co., Inc.
Kentucky Power Co.
Kingsport Power Co.
Michigan Electric Power Co.
Michigan Power Co.
Michigan Gas Exploration Co.
Ohio Power Co.
Southern Oil Coal Co.
Central Ohio Coal Co.
Ohio Electric Co.
Windsor Power House Coal Co.
Twin Branch Railroad Co.
Wheeling Electric Co.
Beech Bottom Power Co.
Cardinal Operation Co.
Ohio Valley Electric Corp.
Indiana-Kentucky Electric Co.

CAROLINA POWER & LIGHT COMPANY

Subsidiaries and Affiliates

Capitan Corporation
Leslie Coal Mining Company
Carolinas-Virginia Nuclear Power Assn., Inc.

CENTRAL AND SOUTH WEST SERVICES, INC.

Subsidiaries and Affiliates

Central Power and Light Company
Public Service Company of Oklahoma
Transok Pipe Line Co.
Ash Creek Mining Co.
Southwestern Electric Power Company
Southwest Arkansas Utilities Corp.
Arklahoma Corp.
West Texas Utility Company
CSR Services, Inc.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

Subsidiaries and Affiliates

Electric Energy, Inc.

CINCINNATI GAS & ELECTRIC COMPANY

Subsidiaries and Affiliates

Union Light, Heat and Power Co.
West Harrison Gas & Electric Co.
Miami Power Corp.
Lawrenceburg Gas Co.
Lawrenceburg Gas Transmission Corp.
Tri-State Improvement Co.
YGK, Inc.

CLEVELAND ELECTRIC ILLUMINATING COMPANY

Subsidiaries and Affiliates

The Ceico Co.
CCO Company

COLUMBUS & SOUTHERN OHIO ELECTRIC CO.

Subsidiaries and Affiliates

Colomet, Inc.
Simco, Inc.

COMMONWEALTH EDISON COMPANY

Subsidiaries and Affiliates

Commonwealth Edison Co. of Indiana, Inc.
Illinois Maintenance Co.
72 West Adams Co.
Chicago & Illinois Midland Railway Co.
Medical Center Steam Co.
Nuclear Resources, Inc.
Cotter Corp.
Commonwealth Research Corp.

DETROIT EDISON COMPANY

Subsidiaries and Affiliates

Edison Illuminating Company
Midwest Energy Resources Company
Peninsular Electric Light Company
St. Clair Edison Company
Washtenaw Light & Power Company
Essex County Light & Power Co., Ltd.
St. Clair Energy Corp.

DUKE POWER COMPANY

Subsidiaries and Affiliates

Mill Power Supply Company
Crescent Land & Timber Corp.
Eastover Land Company
Eastover Mining Company
Wateree Power Co.

Catawba Mfg. & Elec. Power Co.
Western Cardina Power Co.
Caldwell Power Co.
Southern Power Co.
Greenville Gas & Electric Light & Power Co.

FLORIDA POWER & LIGHT COMPANY

Subsidiaries and Affiliates

Fuel Supply Service, Inc.
Land Resources Investment Co.

GULF STATES UTILITIES COMPANY

Subsidiaries and Affiliates

Varibus Corporation

HOUSTON LIGHTING & POWER COMPANY

Parent

Houston Industries, Inc.

ILLINOIS POWER COMPANY

Subsidiaries and Affiliates

Electric Energy, Inc.

IOWA PUBLIC SERVICE COMPANY

Subsidiaries and Affiliates

Cimmred, Inc.
Energy Development Co.
Energy Reserves, Inc.
Centennial Coal, Inc.

MIDDLE SOUTH UTILITIES, INC.

Subsidiaries and Affiliates

Arkansas Power & Light Co.
Arkansas-Missouri Power Co.
Louisiana Power & Light Co.
Mississippi Power & Light Co.
New Orleans Public Service, Inc.

MINNESOTA POWER & LIGHT COMPANY

Subsidiaries and Affiliates

Superior Water, Light & Power Co.
Topeka Land Company
Energy Land, Inc.

MONTAUP ELECTRIC COMPANY

Subsidiaries and Affiliates

Eastern Utilities Associates

NEW ENGLAND POWER COMPANY

Parent

New England Electric System

NIAGARA MOHAWK POWER CORPORATION

Subsidiaries and Affiliates

Beebee Island Corporation
Canadian Niagara Power Co., Ltd.
Moreau Manufacturing Corp.
NM Uranium, Inc.
St. Lawrence Power Co.
The Indian River Co.

NORTHEAST UTILITIES SERVICES COMPANY

Subsidiaries and Affiliates

Connecticut Light & Power Co.
Connecticut Gas Co.
Electric Power, Inc.
Connecticut Transmission Corp.
Shelton Canal Co.
Windsor Locks Canal Co.
City & Suburban Electric Gas Co.
Research Park, Inc.
Hartford Electric Light Company
Nutmeg Power Co.
Mohawk Gas Co.
Connecticut Steam Co.
Holyoke Water Power Company
Holyoke Power and Electric
Northeast Nuclear Energy Company
Quinnehtuk Company
Rocky River Realty Company
Western Massachusetts Electric Company

NORTHERN INDIANA PUBLIC SERVICE COMPANY

Subsidiaries and Affiliates

Shore Line Shops, Inc.
NIPSCO Exploration Co.
NIPSCO Fuel Co.

NORTHERN STATES POWER COMPANY (MINN.)

Subsidiaries and Affiliates

Cormorant Corporation
United Power and Land Co.
Northern States Power Co. (Wisc.)
Chippewa and Flambeau Improvement Co.

OHIO EDISON COMPANY

Subsidiaries and Affiliates

Pennsylvania Power Co.

OKLAHOMA GAS AND ELECTRIC COMPANY

Subsidiaries and Affiliates

Arklahoma Corporation

PACIFIC GAS & ELECTRIC COMPANY

Subsidiaries and Affiliates

Alaska California LNG Co.
Alberta & Southern Gas Co., Ltd.
Alberta Natural Gas Co., Ltd.
Gas Lines, Inc.
Natural Gas Corp. of California
Pacific Gas Transmission Co.
Pacific Transmission Supply Co.
Pacific Gas LNG Terminal Co.
Pacific Gas Marine Co.
Standard Pacific Gas Lines, Inc,

PHILADELPHIA ELECTRIC COMPANY

Subsidiaries and Affiliates

Conowingo Power Co.
Eastern Pennsylvania Development Corp.
Adwin Realty Corp.
Adwin Equipment Corp.
Eastern Pennsylvania Exploration Co.
Philadelphia Electric Power Co.
Susquehanna Power Co.
Susquehanna Electric Co.

ROCHESTER GAS & ELECTRIC COMPANY

Subsidiaries and Affiliates

Canadea Power Corp.

SOUTH CAROLINA ELECTRIC & GAS COMPANY

Subsidiaries and Affiliates

Energy Subsidiary, Inc.
South Carolina LNG Company, Inc.

THE SOUTHERN COMPANY

Subsidiaries and Affiliates

Alabama Power Co.
Alabama Property Co.
Georgia Power Co.
Southern Electric Generating Co.
Gulf Power Co.
Mississippi Power Co.
Southern Company Service, Inc.

TAMPA ELECTRIC COMPANY

Subsidiaries and Affiliates

Tampa Bay Industrial Corp.
Mid-South Towing Co.
Electro-Coal Transfer Corp.
Gulfcoast Transit Co.
Southern Marine Management Corp.
Cal-Glo Coal, Inc.

TEXAS UTILITIES COMPANY

Subsidiaries and Affiliates

Dallas Power & Light Co.
Texas Electric Service Co.

Old Ocean Fuel Co.
Texas Power & Light Co.
Texas Utilities Services, Inc.
Texas Utilities Fuel Co.
Texas Utilities Generating Co.
Chaco Energy Co.
Basic Resources, Inc.

UNION ELECTRIC COMPANY

Subsidiaries and Affiliates

Missouri Power & Light Co.
Missouri Utilities Co.

VIRGINIA ELECTRIC AND POWER COMPANY

Subsidiaries and Affiliates

Laurel Run Mining Co.
Virginia Nuclear, Inc.

WISCONSIN ELECTRIC POWER COMPANY

Subsidiaries and Affiliates

Wisconsin Natural Gas Co.
Wisconsin Michigan Power Co.
Badger Service Co.

WISCONSIN POWER & LIGHT COMPANY

Subsidiaries and Affiliates

South Beloit Water, Gas & Electric Co.
Wisconsin Power & Light Nuclear Fuel, Inc.
NUFUS Resources, Inc.
Wisconsin River Power Co.

No. 91-1639

In the Supreme Court of the United States

OCTOBER TERM, 1992

CHEMICAL MANUFACTURERS ASSOCIATION, ET AL., PETITIONERS

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Environmental Protection Agency's Consolidated Permit Regulations governing the issuance of discharge permits under the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, are directly reviewable in the United States Court of Appeals for the District of Columbia Circuit.

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In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 81-2198

CHEMICAL MANUFACTURERS ASSOCIATION, ET AL., PETITIONERS

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-15) is reported at 673 F. 2d 400.

JURISDICTION

The judgment of the court of appeals (Pet. App. A-16) was entered on March 2, 1982. The petition for a writ of certiorari was filed on May 28, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 301(a) of the Clean Water Act of 1977, prohibits the discharge of any pollutant in navigable waters except in compliance with federal requirements. 33 U.S.C. 1311(a). To the extent applicable, a discharger must comply

with technology-based effluent limitations and standards of performance prescribed by the Administrator of the United States Environmental Protection Agency under Sections 301 and 306 of the Act, 33 U.S.C. (& Supp. IV) 1311 and 1316. See generally *E. I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 112 (1977). Dischargers must also secure National Pollutant Discharge Elimination System (NPDES) permits, which "transform generally applicable effluent limitations and other standards * * * into the obligations (including a timetable for compliance) of the individual discharger * * *." *EPA* v. *California ex rel. State Water Resources Control Board*, 426 U.S. 200, 205 (1976). See 33 U.S.C. (& Supp. IV) 1342. NPDES permits are issued by EPA in each state until the state gives satisfactory assurance that it will administer the program in conformance with federal requirements. 33 U.S.C. (& Supp. IV) 1342. After approving state administration of the NPDES permit program, the EPA Administrator may nonetheless disapprove the terms and conditions of individual permits that the state proposes to issue. 33 U.S.C. (& Supp. IV) 1342(d). See *Crown Simpson Pulp Co.* v. *Costle*, 445 U.S. 193 (1980).

2. On June 7, 1979, EPA substantially revised the regulations governing the issuance of NPDES permits. 44 Fed. Reg. 32854; see also 43 Fed. Reg. 37077 (1978) (proposed revisions). Lawsuits challenging these new regulations were filed in several district courts and courts of appeals.

On June 14, 1979, EPA proposed to consolidate the permit regulations governing NPDES permits with those governing permits for hazardous waste management facilities under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. (& Supp. IV) 6901 *et seq.*, Underground Injection Control (UIC) permits under the Safe Drinking Water Act (SDWA), 42 U.S.C. (& Supp. IV) 300f *et seq.*, and dredged or fill material permits under Section 404 of the Clean Water Act of 1977, 33 U.S.C. (Supp. IV)

1344. See 44 Fed. Reg. 34243 (1979). EPA issued final "Consolidated Permit Regulations" (sometimes referred to herein as "CPRs") on May 19, 1980. 45 Fed. Reg. 33287, codified at 40 C.F.R. Parts 122-125. See generally *Natural Resources Defense Council, Inc.* v. *EPA*, 673 F. 2d 392, 395-396 (D.C. Cir. 1980). Again, interested parties sought review in the district courts and in the courts of appeals.

3. All of the petitions to review the 1979 NPDES regulations and the consolidated permit regulations that had been filed in the courts of appeals were eventually transferred to the United States Court of Appeals for the District of Columbia Circuit. See *NRDC* v. *EPA, supra*, 673 F. 2d at 396; *Virginia Electric & Power Co.* v. *EPA*, 655 F. 2d 534 (4th Cir. 1981). Petitioners then moved to dismiss all of the petitions for review on the ground that the permit regulations were not "effluent limitation[s] or other limitation[s]" within the meaning of Section 509(b)(1)(E) of the Clean Water Act of 1977, 33 U.S.C. 1369(b)(1)(E).

The court of appeals denied the motion to dismiss, reserving judgment on whether any of the challenged regulations was "ripe for review." See Pet. App. A-8 n.13, A-15. The court observed that a superficial reading of Section 509(b)(1)(E) might suggest that only "numerical" effluent limitations were subject to direct review, as petitioners' had argued. See Pet. App. A-5 to A-6. The court found that reading of the statute untenable for two reasons. First, "effluent limitation" is defined in the Act to include (Pet. App. A-5 to A-6) " '*any* restriction' on the amounts of pollutants discharged, not just * * * numerical restriction[s]." Second, assuming that "effluent limitations" only included numerical restrictions, the court noted that Section 509(b)(1)(E) authorizes review of effluent limitations as well as "other limitation[s]." See Pet. App. A-5. Specifically citing (Pet. App. A-9) 40 C.F.R. 122.54, 122.60, and 122.62-122.66, the court explained that some of the consolidated

permit regulations "restrict who may take advantage of certain provisions or otherwise guide the setting of numerical limitations" in NPDES permits. The permit regulations thus contained either "effluent limitation[s] or other limitation[s]" within the meaning of Section 509(b)(1)(E), and the court had jurisdiction to review at least those that were "ripe."[1]

ARGUMENT

1. Petitioners' claims are premature. Of course, as petitioners note (Pet. 8 n.10), this Court has jurisdiction under 28 U.S.C. 1254(1) to review interlocutory decisions of the courts of appeals. See, *e.g.*, *Nixon* v. *Fitzgerald*, No. 79-1738 (June 24, 1982); *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 685 n.3 (1949); *Land* v. *Dollar*, 330 U.S. 731, 734 n.2 (1947). The occasions for the exercise of that jurisdiction, however, should be rare. Indeed, the interlocutory character of a judgment is, without more, sufficient reason for denying a petition for review. *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); see *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916). The matters that require this Court's attention are far too numerous to permit the luxury of reviewing interlocutory decisions, which may "become quite unimportant by reason of the final result, or of intervening matters" (*American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384 (1893)). After final judgment, the interlocutory matters that are still of any consequence may be presented to this Court along

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[1] EPA argued that the court also had jurisdiction to review the consolidated permit regulations under Section 509(b)(1)(D), and pursuant to principles of ancillary jurisdiction. Because the court concluded that Section 509(b)(1)(E) was sufficient to support jurisdiction, it was unnecessary to consider these alternative jurisdictional bases. Pet. App. A-5 n.8.

with any other claims that arise in the course of the proceeding. See, *e.g.*, *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.*, *supra*, 240 U.S. at 257-259.

These concerns apply with particular force in this case for at least two reasons. First, it is not clear that any of the regulations petitioners challenge will ever be reviewed in the court of appeals. The court emphasized that its judgment on the jurisdictional issue implied nothing as to whether any of the consolidated regulations was ripe for review (Pet. App. A-8 n.13): "We hold only that this court has authority under § 509(b)(1)(E) to review any CPR's that are ripe." See also Pet. App. A-15. Second, because of the limited nature of the court of appeals' holding, the jurisdictional issue is necessarily presented to this Court in the abstract and without focus. In effect, this Court is asked to decide the hypothetical question whether the court of appeals would have jurisdiction to review any of the consolidated permit regulations governing NPDES permits, if the court of appeals eventually concludes that any of the regulations petitioners challenge is ripe for its review.[2] Like any other interlocutory

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[2]Many of the challenges to the consolidated permit regulations have already been resolved. See, *e.g.*, 47 Fed. Reg. 4992 (1982) (final regulations implementing settlement of Underground Injection Control issues); 47 Fed. Reg. 15304-15308 (1982) (Regulatory Interpretation Memorandum and Technical Amendments under RCRA Settlement Agreement); Settlement Agreement on NPDES Issues (filed in the court of appeals June 9, 1982). Petitioners and EPA jointly moved to dismiss a number of the challenges to the NPDES regulations on ripeness grounds; the court of appeals agreed that those issues were not ripe, and dismissed them on August 6, 1982. Of petitioners' initial challenges to the NPDES regulations, only a few are still at issue, involving: (1) the breadth of EPA's power to veto permits that the states propose to issue (see 40 C.F.R. 123.75), (2) the failure to provide for modification of best available technology based effluent limitations when available technology does not assure compliance with the limitations (see 40 C.F.R. 122.15), and (3) the retention of authority by EPA to grant certain variances (40 C.F.R. 123.71 and 124.62).

ruling, of course, the court's jurisdictional holding may be rendered academic by its decision on the merits; if not, petitioners can raise their present claims at that time, along with any others they may have.

2. As the court of appeals acknowledged (Pet. App. A-7), there may be some tension between the decision in this case and the holding in *American Iron & Steel Institute (AISI)* v. *EPA*, 543 F. 2d 521 (3d Cir. 1976). For reasons already stated, in its present posture this case is an inappropriate vehicle for resolving any conflict between the two decisions. Moreover, the decisions are not irreconcilable, and, in any event, the court below adopted a reasonable interpretation of the statutory language that is consistent with EPA's current position. Accordingly, even if the decision of the court of appeals were not interlocutory, this case would not warrant review.

In *AISI* v. *EPA*, *supra*, a number of parties sought direct review of EPA regulations governing the circumstances in which effluent limitations or standards for individual NPDES permit applicants could be modified to take into account pollutants in the applicant's water supply. 543 F. 2d at 523 & nn.1 & 2. Deferring to EPA's construction of the statute, the Third Circuit concluded that these regulations were not effluent limitation[s]" within the meaning of Section 509(b)(1)(E). 543 F. 2d at 526-527. Without addressing whether the regulations might be "other limitation[s]" subject to review under Section 509(b)(1)(E) (see 543 F. 2d at 525 n.9), the court dismissed the petitions for review for lack of jurisdiction. It is by no means clear that the Third Circuit would have dismissed the petitions for review if, as in this case, the agency had concluded that the regulations contained effluent limitations. More important, unlike the Third Circuit, the court below considered both aspects of Section 509(b)(1)(E) in ruling on the jurisdictional issue, relying on both in concluding that the consolidated permit

regulations contained *either* effluent limitations or other limitations, within the meaning of the statute. Pet. App. A-7 n.11.

Petitioners' primary contention in this Court (Pet. 14-17) is that Section 509(b)(1)(E) of the Act authorizes direct review only of effluent limitations that are expressed in "numerical" terms. That contention is insubstantial. There is no basis in the language of the statute or its history for restricting the scope of the provision in that fashion. Moreover, as the court of appeals explained (Pet. App. A-5 to A-6), "effluent limitation" is defined to include *any* restriction on the discharge of pollutants, however expressed, including, for example, "schedules of compliance," which plainly are not numerical limitations. 33 U.S.C. 1362(11); see *NRDC* v. *EPA*, 656 F. 2d 768, 775 (D.C. Cir. 1981). Furthermore, petitioners' construction of the statute largely ignores the phrase "other limitations," which is manifestly broad enough to include restrictions on the discharge of pollutants that are not expressed in numerical terms. See *Virginia Electric & Power Co.* v. *Costle*, 566 F. 2d 446 (4th Cir. 1977). Finding no support in the language or history of the provision at issue in this case, petitioners cite (Pet. 16 n.20) a number of other provisions in the Clean Water Act, which assertedly use the phrase "effluent limitation or other limitation" to refer only to numerical restrictions.[3] Petitioners place (Pet. 17) particular, though unwarranted,

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[3]It is unnecessary to pause to consider each of the cited provisions since they shed little light on Congress' intention in authorizing direct appellate review of "effluent limitation[s] or other limitation[s]" in Section 509(b)(1)(E). For example, petitioners cite Section 510 of the Act, which prohibits the states from adopting any "effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance" that is less stringent than those prescribed by EPA. It is far from obvious, and petitioners offer no reason for concluding, that this provision is only applicable if both EPA and the state express the restrictions in "numerical" terms.

weight on a passage from S. Rep. No. 92-414, 92d Cong., 1st Sess. 81 (1971), indicating that "clear and identifiable requirements" would "provide manageable and precise benchmarks" in citizen enforcement suits under Section 505 of the Act, 33 U.S.C. 1365. Non-numerical restrictions may be clear, identifiable, manageable, and precise.

Among other things, the consolidated permit regulations prescribe terms and conditions applicable to all NPDES permits. For example, 40 C.F.R. 122.60(g) restricts the intentional diversion of waste streams from any portion of a treatment facility. Under 40 C.F.R. 122.60(h), noncompliance with technology based effluent limitations is excused if the noncompliance was the result of an "exceptional incident" involving "factors beyond the reasonable control of the permittee." Similarly, 40 C.F.R. Part 125 prescribes the requirements for securing variances from Section 301 effluent limitations. With limited exceptions, "all permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal," including both dissolved and suspended metal (40 C.F.R. 122.63(c)). Other permit regulations flatly bar the issuance of a permit in some circumstances, see 40 C.F.R. 122.52(i), or prohibit the inclusion of certain types of effluent limitations, 40 C.F.R. 122.10(a)(2) and 122.66(d)(4). Each of these provisions regulates the amount, rate, or quantity of pollutants that may be lawfully discharged into the waters of the United States. Compare *NRDC* v. *EPA*, *supra*, 656 F. 2d at 776. Under Section 509(b)(1)(E), therefore, they are reasonably regarded as "effluent limitation[s] or other limitation[s]" subject to direct appellate review. See *NRDC* v. *EPA*, *supra*, 656 F. 2d at 776; *VEPCO* v. *Costle*, *supra*, 566 F. 2d at 446.

To the extent practical consequences and common sense are germane, see *Crown Simpson Pulp Co.* v. *Costle*, 445 U.S. 193, 196-197 (1980); *E. I. du Pont de Nemours & Co.*

v. *Train*, 430 U.S. 112, 136-137 (1977), they also support the holding of the court below. As in *E. I. du Pont*, petitioners' "construction would produce the truly perverse situation in which the court of appeals would review numerous individual actions issuing or denying permits pursuant to § 402 but would have no power of direct review of the basic regulations governing those individual actions" (430 U.S. at 136). "Absent a far clearer expression of congressional intent" (*Crown Simpson Pulp Co.* v. *Costle, supra*, 445 U.S. at 197), the court below sensibly accepted EPA's construction of the statute, which avoids reading such perversity into the judicial review provisions of the Clean Water Act.[4]

There is an additional practical consideration that supports the holding of the court of appeals on the facts of this case. The consolidated regulations govern permit programs under the Resource Conservation and Recovery Act (RCRA), the Safe Drinking Water Act (SDWA), and both the dredged or fill material permit program and the NPDES program under the Clean Water Act. Petitioners do not dispute the jurisdiction of the court below to review the non-NPDES aspects of the regulations; indeed, under the RCRA and the SDWA, the court's jurisdiction is exclusive. See Pet. 3 & n.1, 14 & n.18; Pet. App. A-3 n.3; see generally *NRDC* v. *EPA, supra*, 673 F. 2d at 395. While some of the challenges to the regulations may involve issues unique to one or the other of the programs, there is but one administrative record. To us it seems significantly more efficient and sensible to have one court determine in one proceeding all of the issues that are now ripe for review than to have numerous courts all over the country in separate proceedings similtaneously considering the various NPDES aspects

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[4]Petitioners' make much of EPA's prior and contrary construction of the Act (see Pet. 5-6), but the agency's erroneous construction of the statute in the past surely provides no substantial basis for perpetuating the error once it has been discovered and over the agency's objection.

of the regulations while the D.C. Circuit considers the RCRA and SDWA components. Cf. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 615-617 (1966).[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[5] Although the court of appeals found it unnecessary to consider any alternative jurisdictional bases, we note that these same practical considerations tend to support the exercise of ancillary jurisdiction. See generally *E. I. du Pont de Nemours & Co.* v. *Train*, *supra*, 430 U.S. at 125 n.14.

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No. 81-2198

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CHEMICAL MANUFACTURERS ASSOCIATION, *et al.*,
AMERICAN IRON AND STEEL INSTITUTE, *et al.*,
AMERICAN PAPER INSTITUTE, *et al.*,
AMERICAN PETROLEUM INSTITUTE, *et al.*,
AMERICAN TEXTILE MANUFACTURERS INSTITUTE, *et al.*,
NATIONAL COAL ASSOCIATION, and
VIRGINIA ELECTRIC AND POWER COMPANY, *et al.*,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and
ANNE M. GORSUCH, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

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PETITIONERS' REPLY BRIEF ON CERTIORARI

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PETITIONERS' REPLY BRIEF ON CERTIORARI

Respondents EPA, et al. do not contest the fact that the decision below involves recurring and important questions concerning judicial review under the Clean Water Act, but oppose the granting of certiorari on the grounds (1) that in its present posture, this case is not an appropriate vehicle for reconciling any conflict in the circuits, and (2) that the court below adopted a reasonable interpretation of the statutory language. EPA fails to demonstrate logically how it is possible to reconcile the decisions of the courts of appeals. Nor can "practical considerations" vest the court of appeals with jurisdiction not conferred by Congress, as EPA maintains.

I. THE DECISION BELOW SHOULD BE REVIEWED NOW.

The respondents do not contest the fact that this Court has jurisdiction to review interlocutory decisions of courts of appeals. The Court has not hesitated to grant such petitions where, as here, legal issues of great public importance are presented that are fundamental to the further conduct of the case. (Pet. 8, n.10). Respondents also do not dispute that the decision below involves important recurring questions concerning judicial review under the Clean Water Act. (Pet. 11-13). Under the circumstances, interlocutory review is warranted in this case.

Neither of EPA's arguments that review would be premature can withstand scrutiny. First, EPA implies that the challenged regulations may never be reviewed in the court of appeals. (EPA Br. 5). This suggestion is puzzling and has no basis. As EPA notes (EPA Br. 5, n.2), petitioners have identified unresolved issues that they plan to litigate in the D.C. Circuit. EPA fails to mention that other petitioners below have also advised the parties and the D.C. Circuit that they will raise additional issues concerning these regulations. There has been no suggestion by EPA, any other party, or the D.C. Circuit that these issues are not ripe for review.[1]

Second, EPA argues that this Court is being asked to decide a hypothetical question, and suggests that the jurisdictional holding below may be rendered academic by the D.C. Circuit's decision on the merits. (EPA Br. 5-6). On the contrary, the jurisdictional issue raised here will not disappear even if the

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[1] EPA notes that many of the challenges to the consolidated permit regulations have been remanded to EPA pursuant to a settlement agreement, and that the D.C. Circuit recently granted a joint motion of petitioners and EPA to dismiss certain other issues as not ripe for review. (EPA Br. 5, n.2). The relevant fact, however, is that a number of ripe issues unquestionably remain to be litigated.

D.C. Circuit should rule in favor of the petitioners or dismiss the remaining issues for lack of ripeness.[2] The regulations involved are lengthy and complex, and new issues that cannot now be anticipated will arise as they are implemented and enforced. As a result, continuing litigation as to the validity of the scope of these regulations is virtually certain. The decision below gives rise to recurring questions concerning the proper court for judicial review of these regulations.

The jurisdictional issue will continue to haunt courts and litigants alike. If the decision below is allowed to stand, virtually all EPA regulations under the Clean Water Act will now be subject to challenge in both federal courts of appeals and district courts. (Pet. 5, 11). Burdensome litigation and conflicting decisions as to jurisdiction are likely. The conflict between the circuits on this critical issue creates complete confusion as to the proper forum for judicial review for the many thousands of dischargers throughout the country that are subject to Clean Water Act requirements.

The jurisdictional issue presented can and should be decided now, in advance of briefing on the merits. The D.C. Circuit had no difficulty in deciding the issue on this basis. EPA's proposal that petitioners raise the jurisdictional argument after the D.C. Circuit rules on the merits will only delay unnecessarily the resolution of an important and recurring issue.

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[2] As noted above, we are aware of no basis for respondents vague suggestions as to non-ripeness. The Government does not appear to argue that the jurisdictional issue would remain if the D.C. Circuit should decide that the remaining issues are ripe and rules in a fashion adverse to the petitioners.

II. THE DECISION BELOW CREATES A CONFLICT IN THE CIRCUITS.

The D.C. Circuit "specifically rejected the reasoning" of the decision of the Third Circuit in *American Iron and Steel Institute* v. *EPA*, 543 F.2d 521 (3d Cir. 1976), on the issue now before this Court. (Pet. 8). In response to the direct conflict between the decision below and that in *AISI*, EPA engages in speculation as to what the Third Circuit *might have done* under different circumstances. EPA contends that *AISI* arose before EPA had changed its position as to the scope of jurisdiction under Section 509 of the Clean Water Act, and that the Third Circuit agreed with EPA's prior construction of the statute. By the time the issue arose in the D.C. Circuit, EPA had reversed itself. (*See* Pet. 5-6). EPA thus speculates that the Third Circuit might have taken another view if EPA had then concluded that the regulations in question were effluent limitations. (EPA Br. 6). This speculative analysis ignores the fact that the issue presented to both the Third Circuit and the court below was a legal question of statutory construction for the courts, not the Agency, to decide. There is no indication that the Third Circuit gave undue deference to EPA's initial position on this issue, which we believe was the correct one. The two courts of appeals have reached opposite conclusions on an important legal issue of statutory construction, and EPA's own vacillations on that issue merely underscore the need for certiorari.

A second conflict discussed in our petition also supports the grant of certiorari. As we pointed out, the construction given to Section 509(b) of the Clean Water Act below is also inconsistent with the approach taken by the Second Circuit in *Bethlehem Steel Corp.* v. *EPA*, 538 F.2d 513 (2d Cir. 1976), and *Central Hudson Gas & Electric Corp.* v. *EPA*, 587 F.2d 549 (2d Cir. 1978). (Pet. 10-11). EPA's brief does not dispute this conflict.

III. THE DECISION BELOW IS CONTRARY TO THE LANGUAGE AND PURPOSE OF THE CLEAN WATER ACT.

In Section 509 of the Act, Congress carefully provided for original court of appeals jurisdiction over EPA actions in only six enumerated situations. The D.C. Circuit held that the regulations involved here fell under one of these, namely "approving or promulgating any effluent limitation or other limitation." 33 U.S.C. § 1369(b)(1)(E). As set forth in our petition, the language and history of the Act as well as a number of judicial decisions demonstrate that this term refers to numerical restrictions on the quantities of pollutants that may be discharged. The statute defines an effluent limitation as "any restriction . . . on quantities, rates and concentrations" of pollutants, including schedules of compliance. 33 U.S.C. § 1362(11). We are seeking review by this Court because the D.C. Circuit has assumed jurisdiction over regulations that have virtually nothing to do with limitations on discharges of pollutants, as the court below acknowledged. (Pet. 4, 17).

In response, EPA argues that the phrase "other limitation" is broad enough to include restrictions on the discharge of pollutants of all sorts, whether or not they are expressed in numerical terms. (EPA Br. 7). The D.C. Circuit and respondents stretch this term beyond recognition in applying it to regulations essentially unrelated to restrictions on discharges of effluents, such as regulations governing the persons that may sign permit applications and monitoring reports, the sharing of information by the states with EPA, the EPA review of state permits, and the conduct of permit hearings. (Pet. 4). We fail to see how these provisions relate in any way to effluent limitations, and the brief in opposition is silent on this question.[3]

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[3] The respondents' brief (at 8) does attempt to give some examples of provisions of NPDES regulations that they believe "are reasonably regarded" as effluent limitations or other limitations subject to

Finding no support in the language or legislative history of the statute, EPA relies on "practical" considerations. (EPA Br. 8-10). Such considerations are not valid bases for expanding court of appeals jurisdiction where Congress has not so provided. Even the best of policy reasons cannot vest the courts with jurisdiction not conferred by Congress. (*See* Pet. 13-14, 18).

Moreover, the practical considerations cited are not persuasive. EPA argues that our construction of the statute would permit the courts of appeals to review individual actions in issuing or denying permits, but deny them power of direct review of the procedural regulations governing their issuance. But even under EPA's own theory, the circuit courts would at the time of permit issuance have *no* power of direct review of any regulations subject to Section 509(b) due to that section's 90 day preclusion, except where those rules had been previously unripe or where there were "grounds arising" after the 90 day period. (*See* Pet. 5). Under petitioners' view, a collateral review of rules normally subject to review by a district court[4] could also be had by a court of appeals in connection with direct

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direct appellate review. However, the few strained examples cited cannot justify the assertion of jurisdiction over regulations that are basically procedural.

[4] *See* Pet. 3; 33 U.S.C. § 1365; 28 U.S.C. § 1331. Similarly, under the construction of the statute adopted by the D.C. Circuit and EPA, district courts would have jurisdiction over suits by EPA and private citizens alleging violations of EPA's NPDES regulations, yet would be totally without power to consider the validity of those regulations. *See* 33 U.S.C. §§ 1319, 1365.

review of the issuance or denial of permits, and the 90 day preclusion in Section 509(b) of the Act would not apply.[5]

CONCLUSION

The decision below involves fundamental questions as to the proper court for judicial review of EPA regulations under the Clean Water Act. We urge that the petition for a writ of certiorari be granted.

Respectfully submitted,

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[5] *See* 33 U.S.C. § 1369(b)(1)(F). The respondents also argue that the consolidated regulations contain separate provisions governing permit programs under other statutes, and that petitioners do not dispute the jurisdiction of the D.C. Circuit to review the non-NPDES aspects of the regulations. However, we fail to see how that point is relevant. The NPDES permit regulations must be reviewed in the court Congress directed in the Clean Air Water Act and based on the authority granted to EPA in that Act. The fact that the Agency elected to consolidate separate regulations governing several unrelated programs under acts with different Congressional determinations as to jurisdiction does not make it more sensible for a single court to decide issues arising under several different regulations and statutory schemes.